MYSORE GOVERNMENT, GENERAL AND REVENUE SECRETARIAT
JUDICIAL DEPARTMENT.

[Previous Leg 8 of 1874

Subject Legve Council **File No.** 21 of 07-08

Amendment of the Mysore Registration Regulation I of 1903.

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3		20.2.08	To ~~—— do ——~~	Permitting him to introd the Bill
4		19.2.08	From ~~—— do ——~~	Requesting the Secretary, Ms L Council to take note that the Bill will be introd at the Legve Council meeting to be held on the 24 Feb 08
5	A Copy of the Abstract			Proceedings of the Mysore Legve Council meeting held on Monday the 24th to 28th Feb 08, in which the Bill was permitted
6	374 L.C.	9th March 08	Secretary, Mysore Gazette	Notifies the Bill to amend the Mysore Regn Regulation with a statement of objects and reasons thereof.
7	375-87 L.C.	14.3.08	To all the members of the Mysore Legve Council	Forwards a copy of the Bill with its statements and objects as published in the Gazette
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10.	The	Bill	Containing ~~bearing~~	the assent of H.H. the Maharaja of Mysore for the same.
11.	A Copy		of the Regulation	to amend the Mysore Regl: Regulation

Legg. Council file no: 21-07

~~Reg~~ File No. ~~15~~ of 1907 (1)

Sl. no: 1

Serial No.

Notice Forms for leave to introduce the Bill with forms of application to the Dewan are now submitted.

DCS 19/2/08. Notice form signed by the 1st Cr is received 20.2.08 JWW

The Bill ~~may~~ has now be published in the Gazette together with a Statement of Objects and Reasons. Submitted with a Draft Notification.

DCS. 5/3/08. ~~HB~~ 5/3/08 Issue 9.3.08 JWW

The bill was published with Notfn No 374/Leg/15-07 dt 9/3/08

Copies have now to be sent to the members as required by rule 31. Submitted with a draft for approval. 50 spare copies have been received

JWW 14/3/08 SW 14/3/08 Issue 14.3.08. JWW

Subd to 1st Councillor for introducing the bill at the next meeting of the Legis Co.

SW 21/3/08

21/9 8278 21-9-1908

Keep this with 27 Legs

Subd

NOTE—Contn. sheet.

GPB—50,000—17-3-07

G.R.S. 13]

Routine Notes.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

The necessary forms in connection with the Bill to amend the Registration Regulations are herewith submitted for signature

(Sd) WMW

The forms have been signed by the Min. Cr.

WMW
19/12/08

N.B.—Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form.

GPB—30,000—11-4-06.

Bangalore.

Dated 19th Febry 1908.

To

V. P. Madhava Rao Esq C. I. E.

Dewan of Mysore

Sir,

I beg to request your sanction in writing under Section 12 of Regulation I of 1907, for introducing the bill to amend the Registration Regulation I of 1903

at a meeting of the Mysore Legislative Council.

I have the honor to be,
Sir,
Your most obedient servant,

P. Narasimha Rao

Ex-officio Member.

19/2/08

OFFICE OF THE DEWAN OF MYSORE.

Dated 20th Feb 1908

Mr. J. Ananda Rao, Member of the Mysore Legislative Council, is hereby permitted to introduce the bill to amend the Registration Regulation, I of 1903,

.....

.....

.....at a meeting of the said Council, subject to the rules for the time being in force under the Mysore Legislative Council Regulation, No. I of 1907.

file
21.2.08

M Jnanananda Rao

Dewan of Mysore.

Bangalore

Dated 19th February 1908

To

K. Mylar Rao Esq BA BL

Secretary to the Mysore Legislative Council.

SIR,

Please take notice that I intend making a motion that leave be granted for introducing a bill to amend the Registration Regulation I of 1903 at the meeting of the Mysore Legislative Council to be held on Monday the 24th February 1908.

I have the honor to be,
Sir,
Your most obedient servant,

P Narasimha Rao

Ex-officio *Member, Mysore Legislative Council.*

19/2/08

File
20.2.08

SUPPLEMENT TO

The Mysore Gazette.

PUBLISHED BY AUTHORITY.

BANGALORE, THURSDAY, MARCH 12, 1908.

Abstract Proceedings of the Mysore Legislative Council.

The Council met in the Council Chamber, Public Offices, on Monday the 24th to Friday the 28th February 1908, both days inclusive.

PRESENT.

V. P. MADHAVA RAO, ESQ., C.I.E., Dewan (Presid

Ex-officio Members.

T. ANANDA RAO, ESQ., B.A., (First Councillor).

K. P. PUTTANNA CHETTY, ESQ., (Second Councillor).

Additional Members.

Official.

RAJAKARYA PRAVINA A. RANGASWAMI IYENGAR, ESQ., B.A., B.L.

H. J. BHABHA, ESQ., M.A.

RAO BAHADUR M. MUTHANNA, ESQ.

S. NARAYANA RAO, ESQ.

Non-official.

RAJAMANTRA PRAVINA C. SREENIVASIENGAR, ESQ.

V. N. NARASIMMIYENGAR, ESQ.

M. C. RANGIENGAR, ESQ., B.A.

B. NAGAPPA, ESQ., (Bar-at-law).

SYED AMIR HASSAN, ESQ.

ABSENT.

Official.

M. KANTHARAJ URS, ESQ., B.A.

K. MYLAR RAO, ESQ., B.A., B.L. (Secretary).

Bill to amend the Mysore Registration Regulation, I of 1903.

PRESIDENT.—The first business on the agenda paper is the motion for leave being granted to introduce a bill to amend the Mysore Registration Regulation. Mover.—MR. T. ANANDA RAO.

MR. ANANDA RAO.—Sir, it is proposed to amend Section 88 of the Mysore Registration Regulation, I of 1903, by the insertion of the words "Deputy Post-master General," after the words "Post-master General." Under this section, the Post-master General of Madras is one of the public functionaries exempted from appearance in person or by agent at any registration office in any proceedings connected with the registration of any instrument executed by him in his official capacity or to sign as provided in Section 58. It has been brought to the notice of Government that the duty of executing leases of Post Office buildings has now been transferred to the Deputy Post-master General and that therefore it is necessary that the Deputy Post-master General should also be similarly exempted in his official capacity. The amendment proposed is not of any consequence. I now beg for leave to introduce the bill.

MR. NAGAPPA seconded the motion and it was put to the Council and carried.

Bill further to amend the Code of Civil Procedure.

PRESIDENT.—The next item of business is the introduction and reading of the bill further to amend the Code of Civil Procedure. Mover.—MR. S. NARAYANA RAO.

MR. S. NARAYANA RAO.—Sir, under clause 33 of the rules for the conduct of the business of the Mysore Legislative Council, I beg to introduce the bill further to amend the Civil Procedure Code, leave to introduce which was granted at the last meeting of the Council. The bill has since been printed and published with a statement of objects and reasons as required by the rules. It will be remembered that at the last meeting, three of the five clauses contained in this bill, *viz.*, the first, second and fifth, were conceded on all hands to be very desirable ones and that the remaining two clauses, namely, the third and the fourth, were objected to on certain grounds.

In regard to these clauses, I believe there are very good reasons in support of them, and the adoption of these amendments will certainly facilitate the disposal of work in the Chief Court to a great extent. But, as pointed out by one of the members of the Council at the last meeting, in suits relating to assessed lands the suit valuation is based not on the market value but is calculated at five times the assessment. This circumstance probably renders the limit of Rs. 500 fixed in the proposed amendment unduly high, and I am prepared to concede that there may be some hardship in this. The difficulty can be obviated either by lowering the limit or by adopting the British Indian rule that the suit valuation shall depend on the market value. The latter alternative is probably preferable, but it would involve the amendment of the Civil Courts Regulation and this question requires further consideration. On this ground and also in view of the fact that the whole Code of Civil Procedure will, in all probability, have to be shortly remodelled on the lines of the British Indian Bill now under consideration, I do not propose to press these amendments at present. The other clauses of the bill are non-contentious and their adoption need not be deferred. I have therefore obtained the permission of the President to introduce the bill *minus* clauses three and four. The bill will now be taken as consisting only of three clauses numbered 1, 2 and 5. The last mentioned clause will bear No. 3.

Para 2 of the statement of objects and reasons deals with the bill as it is now intended to stand, and I do not think it necessary to add anything more to it to recommend the bill for the approval of the Council.

I now move that the bill as now altered be read in Council.

SECRETARY.—There are two mistakes in the bill as published in the Gazette. In para 1, for the words "in cases in which such sum is *less* than occurring in clause 1, the words, "in cases in which such sum is *more* than should be substituted, and the word "not" occurring in clause 2, should be omitted.

MR. RANGIENGAR having proposed that the bill as corrected be taken up, and Mr. ANANDA RAO having seconded the motion for reading the bill, the discussion thereon was resumed.

MR. RANGIENGAR.—At the last meeting, when the motion for leave to introduce this bill was brought forward, I submitted that the amendment of Section 310A as it stands in our Civil Procedure Code was very desirable. At that time I did not know the extent and scope of the amendment which the Government Advocate was going to propose. Now having had the advantage of reading the bill, I find that the amendments proposed are in themselves most unobjectionable. But then, they are not quite adequate to the requirements of the case. Section 310A in our Code is very defective in many particulars, and I was under the impression that the whole section was going to be amended; because, in Section 310A as enacted in Mysore there is one feature which places the section in diametrical opposition to Section 310A of the British Indian Civil Procedure Code. In British India, Section 310A has been incorporated for the purpose of giving the judgment-debtor and persons claiming under or through him a further opportunity of retaining the property sold. In our Code, Section 310A, as it stands at present, provides that it is only the judgment-debtor that can claim that right and no one else claiming under or through him after attachment. Because, what is said in the Mysore Code is, that besides a judgment-debtor, a person who has acquired an interest prior to attachment may apply to the Court for the cancellation of the sale, as also a person who has acquired an interest in the property prior to the decree, where the decree itself directs the sale of immovable property. Now in regard to these two latter classes of persons, no concession need be shown, as the law already gives them a sufficient remedy. Their interests do not require to be safeguarded, as they are not affected either by the decree or the sale. Since the enactment of Section 310A in British India, it has been consistently and uniformly held by all the High Courts that the only persons that can apply under that section are the judgment-debtor and persons who have acquired an interest in the property subsequent to the attachment. But persons who are not bound by the decree or the sale and also those who have acquired an interest prior to attachment remain unaffected, and this section does not apply to them. In Mysore, however, the reverse is the case. They are allowed to come in under Section 310A, and apply to the Court to set aside the sale; but persons who are bound by the decree or sale though not expressly impleaded as parties to the suit and persons who have acquired an interest in the property after attachment will be left without remedy, if they are not allowed to come in under Section 310A and have the sale set aside. I expected that this would engage the attention of the Government Advocate. In the event of this humble opinion of mine commending itself to the Council, the whole section may be recast and a satisfactory conclusion arrived at. I would suggest that the bill be referred to a Select Committee.

PRESIDENT.—I understand that our Section 310A is based upon the amendments suggested in British India by the Select Committee appointed for the consideration of the Civil Procedure Code.

MR. SRINIVASIENGAR.—Anybody interested in the property prior to the decree or attachment may now come before the court and ask for the cancellation of the sale. But Mr. Rangiengar's contention is that anybody claiming to have acquired an interest in the immovable property after attachment should have the privilege. That is the law in British India. The wording of the Code in force in British India is "Any person whose immovable property has been sold under this Chapter may at any time within thirty days from the date of sale apply . . ." The judgment-debtor and persons acquiring an interest in the property after attachment come under this category. Any person whose immovable property has been sold can have the sale set aside. Mr. Rangiengar means that not only the judgment-debtor and the person holding an interest therein by virtue of a title acquired prior to attachment should have that right, but also a person who acquires an interest after attachment. We are following the later recommendation of the Select Committee.

MR. RANGIENGAR.—The sale after attachment is not void altogether. It is perfectly good, only it does not take effect against any claim enforceable under the attachment. In all other respects it is perfectly right. The British Indian Legislature recognizing this fact enacted that, even a person who has acquired an interest after attachment can apply to the court within thirty days of sale, pay the money and

have the sale cancelled. By the law as it stands in British India at the present moment, (I am not speaking of the recommendations of the Select Committee), a person having an interest prior to attachment cannot come under the section; because, he has got a remedy elsewhere, and it is only a person acquiring an interest subsequent to the attachment that can come under the section. In the case of the judgment-debtor, both the British Indian and Mysore Codes have provided that he can come and apply to the court to have the sale set aside. The question is, when the judgment-debtor cannot pay the money but asks a relation of his to pay it on the mortgage of the property. It is only then that difficulty arises. It is for the purpose of helping the judgment-debtor that this section was introduced into the Civil Procedure Code. As the law stands here, in Mysore, a person who has acquired interest in the property after attachment cannot come in. That, I beg to submit, is a variation from the British Indian Code.

PRESIDENT.—Then there is a proposal to amend the bill. This may be referred to the Select Committee. Who seconds this proposal?

MR. NAGAPPA.—I second it.

MR. NARAYANA RAO.—I propose that Messrs. C. Srinivasiengar, A. Rangaswami Iyengar, Rangiengar and myself be members of the Select Committee.

The bill was then referred to a Select Committee consisting of the above members.

Bill to amend the Stamp Regulation, II of 1900.

PRESIDENT.—The next business on the agenda paper is the consideration of the bill to amend the Stamp Regulation, II of 1900.

MR. RANGASWAMI IYENGAR.—Last time I submitted to the Council that the provisions of the bill being those already existing in the corresponding British Indian enactment, it was unnecessary to refer it to a Select Committee. The bill was accordingly adjourned for consideration at a subsequent meeting. I have only to propose at this meeting that the provisions of the bill be considered and passed. Mr. Rangiengar approved of the measure in every respect excepting one clause, with reference to which he said there was some ambiguity. He said that the expression "any instrument recording whether by way of declaration of trust or otherwise" occurring in the definition of "Settlement" was rather indefinite, and that it was necessary to make it more clear. But we have only borrowed the words as they are in the British Indian Act, and I take it that the intention of making such a provision is to prevent the evasion of payment of stamp duty in cases of such settlements by making an oral settlement and referring to it in an instrument subsequently executed for other purposes. Where such oral settlements are referred to, the effect of this provision will be to subject them also to stamp duty. I do not think that it is necessary to make any addition to the clause as it stands. Mr. Nagappa said that some of the suggestions made by Dr. Smeeth in connection with mining leases might be discussed in Council. I reserve my comments until Mr. Nagappa makes his remarks.

MR. RANGIENGAR.—So far as my suggestions are concerned, I am perfectly satisfied that as the section stands at present, it does not require any amendment. The word "instrument" is a word well understood, and it is also defined in the Stamp Act. I do not think we need interfere with the section as drafted by the learned mover of the bill. The bill may be passed as it stands.

MR. NAGAPPA.—I do not press the proposals of Dr. Smeeth. The section may be adopted as framed by the mover.

MR. SRINIVASIENGAR.—It is proposed that in the case of a mining lease, the stamp fee to be paid should be calculated on the amount of royalty or value of the share of produce, and such amount or value in the case of leases granted by Government should be estimated by the Deputy Commissioner and in the case of leases granted by any other person at Rs. 20,000 a year. If the value is taken to be Rs. 20,000 the stamp duty comes to Rs. 200, and this may work hard upon the poorer lessees The remedy proposed however does not seem quite suitable. How is the Deputy Commissioner to form his estimate of probable income? After the lease is granted we cannot say what developments may take place. The Revenue Officials have to

proceed upon assumptions and fix the amount. That comes before the Deputy Commissioner for adjudication, and he will not have sufficient materials for deciding the question. I think the stamp duty of Rs. 200 will be too much, and it may be fixed once for all at less than that sum. This question seems to have been left open, and I suggest that it may be considered now.

MR. RANGASWAMI IYENGAR.—In all mining leases, there are two or three provisions in connection with the rent and royalty payable. One is that they have to pay a rent of one rupee per acre, in addition to the royalty fixed according to a certain percentage on the ore collected. There is another provision that, where the Government is not satisfied with the working, they have a right to fix an additional rent not exceeding Rs. 5 an acre. That would mean about Rs. 3,200 a year when a plot of land granted for mining purposes consists of 640 acres, or a square mile. In all leases, as was pointed out by Mr. Srinivasiengar, it is very difficult to say what the probable output of mining material may be and what income or royalty will become due to Government in any year, and it is quite possible that the Deputy Commissioner will have no satisfactory materials to go upon. In fact, even the lessees themselves may not be in a position to say what income they may be able to derive. But my own idea was that, if we leave the fixing of the royalty or the value of the share to the discretion of the Deputy Commissioner, the Government may by executive orders lay down instructions by the help of which the amount may be fixed. If this view is accepted, there is no necessity for making any alteration in the bill as it stands. But if it is considered desirable to make a provision, then the utmost that can be claimed by way of rent is Rs. 3,200 a year for a square mile, even if the lessees fail to work up the property properly. And we need only add a provision to say that where there are no satisfactory materials for fixing the income to Government in a year, it need not exceed Rs. 3,200; because, in all cases, the stamp duty is the same as on a sale deed for a consideration equal to the amount or value of the average annual rent reserved. If Rs. 3,200 be taken as one year's rental, it would be cheaper. (Rs. 3,200 is the amount that can be collected annually. This is the maximum amount.) So we have got some data to go by. It is the penalty which the company is made to pay in case the property is not properly worked and no royalty is paid to Government. That provides a standard by which the Government can go by. We are now discussing a case in which we are not able to estimate the royalty and where the royalty may be very low. It cannot be worse than zero, and even then the Government have the right of getting Rs. 3,200.

Under these circumstances, I would recommend that the bill, as it is, be allowed to be passed, and if not, we might say that the amount need not be fixed at more than Rs. 3,200, unless there are definite data on which a fair estimate may be made with reference to similar properties worked by other companies in the neighbourhood. If, for instance, there are a number of blocks given out elsewhere and the parties have estimated the probable output and have agreed to pay stamp duty, there is no reason why we should not be guided by it. Again, there may be a case in which an expert, after examining the grounds, is able to estimate what quantity of mining material, ores, etc., can be excavated and what profit can be expected; or the lessees themselves may be able to furnish information and prospectuses. In such cases, there is no reason why we should not accept their valuation. Otherwise, a minimum may be fixed by Government.

MR. SRINIVASIENGAR.—I agree with Mr. Rangaswami Iyengar's opinion.

MR. NAGAPPA.—If executive orders be passed by Government from time to time in this behalf, I think that it will meet the requirements of the case.

MESSRS. SRINIVASIENGAR and RANGIENGAR.—The bill as framed may be passed.

The Council having been unanimously in favour of the bill, the President said that it may be taken as passed.

The Village Offices Bill.

PRESIDENT.—The next subject is the Police Bill, which Mr. Puttanna Chetty is in charge of. But he proposes to take it up later on. We will now deal with the Village Offices Bill. I think we may take up the amendments in the order of the

sections to which they refer. Mr. Nagappa's amendment refers to the very title of the bill.

TITLE AND PREAMBLE.

MR. NAGAPPA.—Sir, it is necessary to add the word "Hereditary" before the words "Village Offices" in order to express more fully the scope of the enactment. Most of the provisions of this bill are adopted from the Madras Act III of 1895 and the corresponding Bombay Act. The term "Hereditary" is used in both these Acts, and there is apparently no reason assigned as to why this word is dropped in the title of the bill. Hence I propose that the word "Hereditary" be added before the words "Village Offices."

The preamble in any enactment usually states the general object and intention of the Legislature. It is a key to the understanding of the whole enactment. It is often consulted for the purpose of solving any ambiguity, for determining the meaning of words which have more than one meaning, and for interpreting the scope of the Act, wherever the enacting part is in any of these respects open to doubt. It generally sets out the reason for the enactment and the mischief or inconvenience it seeks to remedy. In a word, the function of the preamble is to explain what is ambiguous in the enactment. The objects of this bill may be stated generally to be *first*, to recognize the hereditary principle in the disposal of claims to village offices; *secondly*, to prescribe the qualifications requisite for appointment as village officers; *thirdly* to define the powers of Revenue Officers as regards the appointment, removal and suspension of village officers; and *fourthly*, to lay down the procedure for the trial of suits, etc. Hence I propose this amendment for the alteration of both the title and the preamble.

As I said, the word "Hereditary" is found in the title of both the Madras and Bombay Acts. The preamble of the present bill contains the word "Hereditary," and so do some of its provisions, as for instance, the definition of "Village office," etc. There is no reason why it should be dropped from the title of the bill. If it is inserted as proposed, it will have the effect of explaining that we adhere to the recognition of hereditary right and that we have not in any way departed from the hereditary principle hitherto followed.

MR. RANGIENGAR.—I beg to second the proposal without, however, committing myself to the reasons submitted by Mr. Nagappa.

I think it is desirable that heredity should be given prominence to in the bill. When the Select Committee discussed the bill, it was proposed to add the word "Hereditary" but it was thought not necessary, and the learned Revenue Commissioner drew my attention to the fact that in this bill, references are made to appointments which are purely temporary, as for instance, appointment made by an inamdar for a certain period of time, appointments made by Government only for a temporary period or during the lifetime of a particular individual, etc. With all this explanation, it seems to me that it is desirable to insert the word "Hereditary" in the title of the bill, inasmuch as this Act is intended to govern the relations of village servants who hold office hereditarily under Government. Then the preamble also, I submit, may be amended, as proposed by Mr. Nagappa.

MR. ANANDA RAO.—There is a provision in the Land Revenue Code, Section 14, in which it is stated that stipendiary patels and village accountants may be appointed where no hereditary patel or village accountant exists. When this point came up for discussion in the Select Committee, it was pointed out that in such cases the use of the word "Hereditary" would be inappropriate, as the person appointed did not get the office by heredity, though the office might descend in his line after his death. So the present title is of a wider application than the other. Again, I don't see any advantage in inserting the word "Hereditary." And as to the preamble, my own impression is that the value attached to it is very little and that it forms no part of the Act.

MR. SRINIVASIENGAR.—I am of the same opinion. If the word "Hereditary is added, the title would be inappropriate, as the bill applies also to offices which are not hereditary. So, I think, we need not complicate matters by the addition of the word. There is evidently an impression abroad that the hereditary nature of the offices is being detracted from by the legislation before us, but it has been distinctly explained to all concerned that no such intention is in the mind of the Government

hat being so, the more comprehensive expression used in the bill may stand. The insertion of any additional word seems unnecessary.

As regards the preamble, I doubt whether it would be possible to include in it the manifold provisions contained in an extremely difficult piece of legislation such as that now under consideration. The safest plan in such cases is, to my mind, to make the preamble as short and comprehensive as possible, so that there may be no omissions. I am not sure if Mr. Nagappa's amendment itself will be exhaustive. It is plain that he himself feels that he is not sure of his ground, and accordingly adds the words "and other purposes." Surely, a preamble worded so indefinitely as that cannot enhance the value of the enactment in any way. The wording, as it is, seems to me to meet all cases. The insertion of the word "Hereditary" in the title of the bill is not of much consequence, and though I don't say I am opposed to the proposed amendment, I say it is immaterial and may prove mischievous.

MR. RANGASWAMI IYENGAR.—In this connection, I wish to say that the Madras Act does not apply to all village officers. Section 3 thereof says: "It shall apply only to hereditary village officers who hold emoluments in land. . . " and the policy in Madras and elsewhere has been to exclude ordinary karnams and village officers who are appointed by Government, whereas the proposed Regulation is intended to deal with all kinds of village officers, not only those who have been holding the offices by hereditary right but also village officers who have been recently appointed and in whose cases the claim of heredity is not admitted: there are cases in which the appointments recently made do not carry with them the right of heredity. In this way it would be a mistake to say "Hereditary Village Offices" and if we do so, we shall not be able to deal with such offices properly.

MR. NAGAPPA.—In reply to the Revenue Commissioner, I beg to point out that "Village Office" is defined to mean "every office to which emoluments have been attached and which is held for the performance of duties connected with the administration or collection of revenue." So, if a new man is appointed, in whatever form he may be paid, he becomes a village servant. In the case of persons appointed by Government, their offices, I take it, become hereditary unless they are excluded from the operation of this Act. The office of any new man who enters the service becomes hereditary. That, I think, is the intention of the legislature. In order to make it plain that such a person also comes within the Act, I would add "Hereditary" and make the preamble more explicit. In all well-drawn enactments, we find generally the objects and reasons stated fully in the preamble. It is often consulted by a judicial interpreter in solving any ambiguity. Such being the case, I don't see why my amendment should not be accepted.

MR. C. SRINIVASIENGAR.—Here, for instance, is the Civil Procedure Code which is admitted to deal with very weighty and complicated matters in which the preamble is very briefly stated. You cannot set out the whole subject in it.

MR. NAGAPPA.—Here is a book by Maxwell on Interpretation of Statutes, which contains the following:—"The preamble is the key to the understanding of an Act, and as it usually professes to state the general object of the legislature in passing the enactment, it may be legitimately consulted in solving any ambiguity or fixing the relation of words or keeping the effect of the Act plain." In a word, it is to be taken as a fundamental principle standing, as it were, at the threshold of the whole subject of interpretation, that the intention of the legislature is invariably to be accepted and carried into effect whatever may be the opinion of the judicial interpreter of its wisdom or justice."

The intention of the legislature is to be expressed in the preamble, and that will be a key to the understanding of the whole enactment. No doubt, as the learned mover said, the title does not form part of the enactment. These are the later decisions. The preamble must generally set out the object of the bill. My proposed amendment is taken from the Madras Act. The words "certain other purposes" are not my own, but are borrowed from it. The preamble must be so explicit as to contain the main objects and reasons of the proposed bill, and there is no reason why it should be as short as has now been adopted. As soon as this Regulation is passed by the Council, it becomes law, and all the rules and existing orders will thereby be repealed. This will be a fresh law. Hence I say we must be specific.

PRESIDENT.—We recognize the hereditary principle with regard to village offices. We may create a new office or introduce a stranger to an office already existing, but the succession in either case is hereditary. So I think we may adopt Mr. Nagappa's amendment as regards the title of the bill.

MR. K. P. PUTTANNA CHETTY.—No temporary appointment can have that hereditary character.

MR. V. N. NARASIMMIYENGAR.—Because the word "Hereditary" is omitted from the title and the preamble, does the office cease to be hereditary? The principle underlying the law is not altered.

MR. K. P. PUTTANNA CHETTY.—Mr. Nagappa merely voices the opinion of the people who seem to think that the hereditary nature of the village offices is interfered with by the present Regulation. In order to reassure the people, Mr. Nagappa proposes that the word "Hereditary" should be inserted in the title and it may be done.

PRESIDENT.—There is no harm in doing so.

MR. C. SRINIVASIENGAR.—It is not an acknowledged principle, I think that all village offices are necessarily hereditary. They do not become such unless that character has been acquired by long enjoyment.

MR. M. C. RANGLENGAR.—Clause 8 is very clear on the point. "When a vacancy occurs in the office of patel, shanbhog, nirganti, toti or talari of an unalienated village, the Deputy Commissioner or Assistant Commissioner shall fill up the vacancy in accordance with the provisions of the following sub-sections . . . ." and going to sub-clause (2), it is stated that "the succession shall be regulated by the ordinary provisions of the law applicable to the last holder."

It is not said that the holder himself should have held the office from a long line of successors.

MR. A. RANGASWAMI IYENGAR.—As it is now, there have been appointments not considered as hereditary.

MR. SYED AMIR HASSAN.—Is there any objection to specify them?

MR. T. ANANDA RAO.—In regard to the Amrut Mahal Kavals, I have some recollection that those appointed in that connection are not hereditary; and also some appointed for coffee estates.

MR. A. RANGASWAMI IYENGAR.—Hereditary character is not attached to an office unless it is held for at least one generation.

MR. T. ANANDA RAO.—A statutory patel becomes such only if he holds office for at least one generation and before that he cannot be fined, etc., under this Regulation.

PRESIDENT.—The Revenue Code itself makes provision for officers who are stipendiary in villages where no village accountant or patel exists. Section 14 says:—"In villages where no hereditary patel or village accountant exists, it shall be lawful for the Deputy Commissioner, under the general orders of the Government and of the Revenue Commissioner, to appoint a stipendiary patel or village accountant, who shall perform respectively all the duties of hereditary patels or village accountants as hereinafter prescribed in this Regulation, or in any other law for the time being in force, and shall hold their situations under the rules in force with regard to subordinate revenue officers." Until the office becomes hereditary, he will be subject to the same rules and to the same discipline as are applicable to revenue officers; so the case of such patels is taken out of the present bill. I think that as far as appointments in Mysore are concerned, the general character is one of a hereditary nature; and the adoption of the word "Hereditary" in the title and the preamble would not affect the provisions of the Regulation.

MR. B. NAGAPPA.—There is an amendment to specify the classes of village offices to which this bill shall apply. Appointments which are not hereditary may be brought as an exception thereunder.

PRESIDENT.—We shall take the sense of the Council.

Mr. Nagappa's amendments being put to the Council were lost, votes being 2 *for*.

CLAUSE 1. SUB-CLAUSE (2).

PRESIDENT.—We proceed now to the next amendment,—clause 1, sub-clause (2).

MR. B. NAGAPPA.—I beg to withdraw it as provision is already made by the Select Committee in clause 21, para 3.

CLAUSE 2.

PRESIDENT.—The next amendment is the addition of the following sub-clause after clause 2.

MR. NAGAPPA.—The amendment which I beg to move is:—

"It shall apply to the following classes of village offices, provided that emoluments have been attached thereto:—

Class of village offices to which it applies.

1. Gowda or Patel—headman of the village.
2. Shanbhog—accountant.
3. Kulavadi *alias* toti—the watchman of the village.
4. Nirganti—regulator and distributor of water for the fields.
5. Talari."

I may be permitted to slightly alter this. The proposed addition may be taken as sub-clause (2) and the present clause 2 may be taken as sub-clause (1). Just as in clause 1 there are sub-clauses (1), (2) and (3), we can have separate sub-clauses in clause 2 if my suggestion be adopted.

In proposing this amendment, I beg to bring to the notice of the Council the necessity for inserting such a clause. It is very essential to enumerate the classes of village officers to whom the bill applies. The village establishment is composed of not less than 12 officials. The definition of village officer as given in the bill is so extensive as to comprise the various officers mentioned in Appendix I, page 61 of the Revenue Manual.

It can hardly be the intention of the legislature that the provisions of this bill should apply to the *madiga*, the *agasa*, the *nayinda*, the *kabbinadava*, the *kumbara* and the *badagi*. Whatever might have been the functions of these persons in olden days, they have no place whatever in the present day administration of revenue affairs. In this connection, I cannot do better than quote the opinion expressed by the Second Councillor, Mr. K. P. Puttanna Chetty, the then Deputy Commissioner of Kolar. [*Vide* page 15 of the compilation of papers relating to the Draft Village Offices Regulation.] The definition of "Village office" appears to have been borrowed from the Bombay Act III of 1874; but the definition is so vague that doubts arose, and both the Government and the High Court of Bombay had to decide if the village offices of carpenter and *khazi* were village offices within the meaning of the term. With a view to obviate such doubts and difficulties, I propose the present amendment which enumerates the classes of village officers to which this Regulation applies.

MR. T. ANANDA RAO.—As a small contribution to the discussion on this point, I may point out that the term "Village office" is defined to be one held for the performance of duties connected with the administration or collection of revenue . . .; and then comes the provision that Government may exclude any office from the definition. In cases of doubt, Government will decide. So the bill makes ample provision.

MR. V. N. NARASIMMIYENGAR.—The *Barabaluti* have been divided into two classes, those that render service to Government and those that render service to the village community. It is only the first class of village servants that comes under the head of "Village officers." The emoluments of the others, whatever they were, I believe, have been enfranchised. This principle has been observed in the Inam settlements, and they are no longer in existence. Only the patel, the shanbhog, the toti, the nirganti and the talari are now recognised. Of course, the last two are differently named in different places. With the exception of these five, the emoluments of the seven others, *viz.*, the joisa, etc., have been enfranchised by the Inam Department, and they no longer form part of the *Barabaluti*. They may perform their functions privately and get remunerated by the villagers, but Government does not recognize their mirasi. So the village officers, properly so called, are those enumerated by Mr. Nagappa himself and none others.

MR. C. SRINIVASIENGAR.—It is possible there may be others. So it may be left to the Government either to add to, or subtract from, the list. There is no object in circumscribing the list.

MR. NAGAPPA.—But to get an expression of opinion from Government. the poor litigants will have to undergo considerable hardship.

MR. SRINIVASIENGAR.—The five names mentioned by Mr. Nagappa are specifically mentioned in the bill. In the case of the other offices, the Government reserve to themselves the power either to retain or to cancel them as they deem fit.

The amendment of Mr. Nagappa not being seconded was lost.

CLAUSE 4.

PRESIDENT.—The next amendment is that proposed by Mr. Rangiengar. It is that a definition of the word "holder" be added in clause 4, and that it be defined as follows:—

"HOLDER OF AN ALIENATED VILLAGE.—'Holder of an alienated village' means either the sole proprietor of the village, or if there are more persons than one entitled to the village, either jointly or severally, in equal or unequal shares, whoever is appointed as holder of the village for the purpose of this Regulation by all such persons intimation whereof is given in writing to the Deputy Commissioner. If such appointment is not made and intimated or if the persons so entitled to the village do not agree in making the appointment, the Deputy Commissioner shall declare who among them the holder of the village is for the purposes of this Regulation."

MR. RANGIENGAR.—Originally, the word "proprietor" had been used in the bill. I don't think the word "holder" is defined anywhere. In the case of village officers, we find in the bill certain powers conceded to holders of alienated villages. In the case of the sole proprietor, there is no difficulty. But it often happens that there are a number of co-sharers in the village, and the difficulty will arise only then. In order to obviate any such difficulty that might arise, I propose that the word "holder" may be defined so as to require the holders themselves to nominate one who may be recognised as such, or if they don't agree, to empower Government to nominate one.

MR. NAGAPPA.—I beg to second the amendment. In doing so, I wish to bring to the notice of the Council several complaints made by co-sharers of a village. They are not always unanimous in the choice of the holder; and it is very desirable that one of them should be appointed holder for the purpose of exercising the powers vested in a holder by this Regulation.

MR. SRINIVASIENGAR.—The provisions of this bill deal with village offices in both alienated and unalienated villages. The holder of an alienated village comes in, in connection first with the punishment of village officers, and secondly with the appointment of village officers. The question is, who is the man that should make appointments in alienated villages and who is competent to punish? These are the only two matters to be considered. The definition as proposed by Mr. Rangiengar will not meet sufficiently the object in view. When we come to the chapter on punishments and appointments, it will be seen that there are certain powers proposed to be conferred upon holders of alienated villages. In that connection, we may say that persons who are specially recognised and declared by Government or by the Deputy Commissioner as holders may exercise those powers.

MR. RANGIENGAR.—I respectfully submit that unless we define the word "holder," no good purpose will be served by declaring that certain individuals who are specially recognised by Government or Deputy Commissioners should have those powers. Such a provision will also to a great extent take away from the dignity and importance of the holder of an alienated village. The Deputy Commissioner may recognise any person he likes and till the Deputy Commissioner recognises some one as holder, no holder can exercise the powers conferred by this Regulation.

MR. SRINIVASIENGAR.—The powers given are very small, and so I said we may consider them afterwards.

MR. RANGASWAMI IYENGAR.—I find that the word "holder" is defined in the Land Revenue Regulation. It is used further on with reference to alienated villages.

So the holder of an alienated village referred to, would be the man who comes under the provisions of the Land Revenue Regulation, Section 99. It cannot be said that the word has not a clear meaning attached to it. There may be some difficulties in working this provision. The holders must recognise a particular individual, for the purposes of this Regulation. The rules to be framed under the Regulation may make the necessary provision in this respect. It does not seem necessary to mention all that in the Regulation itself.

MR. NAGAPPA.—I beg to say that the word "Holder" is proposed to be defined only for the purposes of this Regulation. "Holder" is that person who has been appointed by the shareholders themselves or one appointed by the Deputy Commissioner.

PRESIDENT.—Mr. Rangiengar's objection is that the status of the holder is not recognised and he is not given a proper place by a definition. But Mr. Rangaswami Iyengar meets that objection by saying that he is already defined in the Land Revenue Regulation and Mr. Srinivasiengar says that when we deal with the section of this bill under which powers are proposed to be conferred on the holders of Inam villages, we may there indicate who the holder shall be.

MR. NAGAPPA.—If that is so, I have no objection.

MR. RANGIENGAR.—I withdraw the amendment after the explanation given.

PRESIDENT.—The next amendment is from Mr. Syed Amir Hassan about the expression "Assistant Commissioner."

MR. SYED AMIR HASSAN.—I beg to move that the words "Sub-Divisional Officer" be substituted for the words "Assistant Commissioner" wherever they occur in the bill, as the group of taluks in charge of an Assistant Commissioner is now called a "Sub-Division."

MR. SRINIVASIENGAR.—The definition of "Assistant Commissioner" given in the bill may not stand the test of scrutiny. Any other Assistant Commissioner may not be an Assistant Commissioner for all purposes, but only for a particular purpose. So, we may say that, in regard to the cases referred for disposal, he shall be "Assistant Commissioner."

What the Select Committee has suggested is good. But the Assistant Commissioner who is not in charge of taluks should be an Assistant Commissioner only for this purpose, much limited in scope. Throughout the Regulation, the word Assistant Commissioner is used. But it does not include the Assistant Commissioner referred to here. The addition is made only for a limited purpose. So that, there are three classes of officers,—Deputy Commissioner, Assistant Commissioner in charge of a Sub-Division and an ordinary Assistant Commissioner who can exercise the powers of an Assistant Commissioner under this Regulation only in cases referred to him by the Deputy Commissioner. The Assistant Commissioner here is only for a particular purpose. This intention is not sufficiently expressed. I propose that the words "in so far as such cases are concerned" be added after "disposal." I think this would be an improvement on Mr. Syed Amir Hassan's amendment.

MR. SYED AMIR HASSAN.—I beg to withdraw my first motion and second Mr. Srinivasiengar's amendment.

The sense of the Council was taken, and this was agreed to be adopted.

CLAUSE 6, SUB-CLAUSE (2).

PRESIDENT.—Next comes Mr. Nagappa's amendment to clause 6, sub-clause (2).

MR. NAGAPPA.—The amendment I beg to propose is that a semi-colon be substituted for the full stop at the end of this sub-clause and the following words be added, "provided that preference shall be given to the holders of the office which carried the highest emoluments."

The provision contained in clause 6, sub-clause (1), regarding the grouping, amalgamation or division of villages is a drastic measure resulting in the abolition of a hereditary village office and the dismissal of the holder of such office. At the same time, it may be necessary for the efficiency of the village service to resort to such a measure. It is only equitable in such cases that the hereditary right of the holder of the office carrying the highest emoluments before the amalgamation should be

preferred to the rights of the other holders whose offices carried smaller emoluments. We find from the records very few instances of such abolition of hereditary village offices.

When the Government found it necessary to abolish an existing village office, the holders of such offices were invariably compensated for the loss they sustained. In the year 1878, the services of surplus sarkari shanbhogs were dispensed with, their Inams were treated under clause F of Rule VIII of the Inam Rules, and confirmed on a quit-rent which was fixed at half the assessment (*vide* Order No. 10699-229, dated Bangalore, 7th March 1878). When the Government thought fit to abolish the office of Magani shanbhogs and Nadigs in the year 1879, the former were placed in charge of new villages created in the reorganisation scheme and the umbli lands of the latter were enfranchised on half quit-rent under clause F of Rule VIII of the Inam Rules (*vide* Order No. 1615—R. 56, dated Bangalore, 17th May 1879).

Thus the policy of the Government was not to deprive entirely the hereditary right of any holder of the office whose services were no longer required without any compensation being given to him. Though it is not intended to provide for any compensation for the loss of hereditary right, this amendment only provides for equitable treatment at the hands of the authorities by recognition of such hereditary rights.

I propose that if there are two villages with two offices before the amalgamation, one carrying greater emoluments and the other smaller, when they are amalgamated, the holder of the office whose emoluments were greater may be preferred. So, I say that preference shall be given to the claims of such holders by the Deputy Commissioner. If the Deputy Commissioner finds that he is inefficient he may dispense with him. This may be one of the points for consideration by the Deputy Commissioner.

PRESIDENT.—The motion is not seconded.

MR. RANGASWAMI IYENGAR.—In this connection, I would suggest that power be reserved to Government to lay down certain rules. The words "subject to the rules prescribed by Government" or, "as from time to time may be made in this behalf" may be added after the words "Assistant Commissioner shall." Section 23 is very exhaustive and refers to every part, and we may make provision for rules being framed in this behalf.

MR. NAGAPPA.—After "shall," the words "subject to the rules made in this behalf under Section 23" or "with reference to rules. . . ." may be inserted.

MR. RANGASWAMI IYENGAR.—You must say in the rules what the qualifications to be taken into consideration by Government are. These are only general provisions.

MR. NAGAPPA.—The clause may be read like this:—
shall "subject to rules made in this behalf under Section 23" select a person, etc. . . .

PRESIDENT.—The length of enjoyment of the office, largest emoluments, best educational qualifications and the community to which the man belongs—all these considerations will weigh with the Government in the selection of the man. Rules will have to be framed to guide the Deputy Commissioner in the exercise of his discretion. The amendment may accordingly be "shall select the person whom he may consider the best qualified under rules made in this behalf by Government under Section 23."

MR. ANANDA RAO.—Or it may be like this: "shall subject to such rules as Government may make in this behalf under Section 23."

MR. NAGAPPA.—I withdraw my amendment in favor of this.

The amendment proposed by Mr. Ananda Rao was put to the Council and carried.

CLAUSE 7, SUB-CLAUSE (1).

PRESIDENT.—The next amendment is Mr. Rangiengar's, about the non-residence of a village officer within the limits of his charge.

MR. RANGIENGAR.—Sir, I beg to move that the words "in cases in which such non-residence has not been permitted in writing by the Deputy Commissioner in

accordance with rules made by Government under Section 23 of this Regulation" be inserted after the words "for non-residence in the village." There may be special cases in which the residence of a village officer within his charge may not only be not practicable but positively inconvenient. In such cases, if the village officer obtains the permission of the Deputy Commissioner, he should not be made liable to any punishment. If he resides outside his charge without such permission, then alone he may be made liable.

MR. NARASIMMIYENGAR.—I second Mr. Rangiengar's amendment. Unless this is specified in the Regulation, Deputy Commissioners are likely to worry the patels.

MR. RANGASWAMI IYENGAR.—I think it is better to leave the section as it is.

MR. C. SRINIVASIENGAR.—Mr. Rangiengar wants power to be given to the Deputy Commissioners to authorize non-residence in exceptional cases. I agree that this is desirable. The words "in cases in which such non-residence is not permitted by the Deputy Commissioner" may be added after "non-residence in the village."

After further discussion the Council resolved to insert the expression "except when such non-residence is permitted by the Deputy Commissioner" after the words "for non-residence in the village."

CLAUSE 7, SUB-CLAUSE (2).

PRESIDENT.—The next amendment is that proposed by Mr. Nagappa in clause , sub-clause (2).

MR. NAGAPPA.—The amendment I propose is that the following be added as another sub-clause to clause 7.

"The maximum amount of fine imposed upon any holder of a village office under sub-section (1) shall not exceed his half-year's emoluments and that under sub-sections (2) and (3) shall not exceed his three months' emoluments."

The proposed amendment may conveniently be added as a distinct sub-clause after sub-clause (3) and numbered as sub-clause (4), and the present sub-clause (4) may then be numbered as sub-clause (5).

All the existing rules and orders, if any, fixing the maximum amount of fine to be levied by the Deputy Commissioner or other Revenue Officer, will be repealed by the passing of this bill. The Government have not specifically been authorized under clause 23 of the present bill to frame rules in this behalf. It is, therefore, necessary for a clause to be inserted fixing the maximum amount of fine. Hence I propose this amendment.

I beg to invite the attention of this Council to the opinions expressed by the Second Councillor, Mr. K. P. Puttanna Chetty, when he was Deputy Commissioner of Kolar and also by Messrs. M. Narayana Rao and Thyagaraja Iyer, published at pages 3, 16 and 19 of the printed collection of papers relating to the Draft Village Offices Regulation.

MR. RANGASWAMI IYENGAR.—It does not seem necessary to limit the fine.

MR. NAGAPPA.—Then it may extend to a year's emoluments. In such cases, it is necessary to fix the maximum; and I think such a clause is necessary. By the passing of this Regulation, all the existing rules on the subject will be repealed.

PRESIDENT.—Is there any restriction in Madras or Bombay?

MR. NAGAPPA.—I think it is one-third or three months' emoluments.

MR. RANGASWAMI IYENGAR.—I propose to omit this here and bring it in the rules to be framed under Section 23.

PRESIDENT.—I rather think we may adopt it so as to cover all the sub-clauses. But I wish to know whether the power given to holders of alienated villages to fine is an innovation.

MR. RANGIENGAR.—In Madras, an official member represented before the Select Committee that such a power should be given to the holder; but the non-official members rejected the proposal mainly on the ground that there was no fund to which the fine could be remitted. It was also urged that it would be an incentive to the holder of the village to fine his own servant and swell his pocket.

PRESIDENT.—So, this question came before the Madras Legislative Council and was lost.

Mr. NAGAPPA.—I suggest that the addition proposed by me may form a distinct sub-clause

MR. SRINIVASIENGAR.—The holder can fine all the village officials and the question is whether he should have such power of fining. In some cases, there may be many holders who may not come to an agreement on this point. So, I suggest that the selection of the holder who may be invested with this power should rest with Government rather than with co-sharers.

MR. PUTTANNA CHETTY.—The opinion of the majority of the inamdars may be taken into consideration in appointing the holder. The difficulty all along has been that the holders of villages cannot enforce any authority with regard to patels and shanbhogs. Very often, the accounts are not properly kept by the shanbhogs, and the jodidar or inamdar is helpless. So some disciplinary power must be vested in the holder so as to enable him to get the work properly done.

MR. RANGIENGAR.—To my knowledge, the inamdar has absolutely no control.

PRESIDENT.—I think we should be meeting the interests of all by adopting Mr. Srinivasiengar's suggestions; that is, by selecting the holders who can be trusted with the proper exercise of this power. That will be an incentive to inamdars to properly qualify themselves for being entrusted with it, and to give guarantee to Government of their being able to use it well and not to abuse it; of course, the choice will fall on the best man.

MR. NARAYANA RAO.—The difficulty is how the fine can be recovered.

MR. RANGASWAMI IYENGAR.—The general idea is that the shanbhogs have got a certain amount of potgi. The Deputy Commissioner can treat the fine as a revenue demand and credit it to the fund of the village.

I would vote for Mr. Srinivasiengar's amendment. We may confer this power only on holders of big villages and leave the cases of officials in other villages to the Amildar to be dealt with on complaint of the holder. The powers may be conferred according to individual cases.

PRESIDENT.—Mr. Srinivasiengar will please draft an amendment which will cover all cases and place it before the Council to-morrow.

MR. C. SRINIVASIENGAR consented to draft an amendment.

The Council adjourned to the next day (25-2-08).

TUESDAY, 25TH FEBRUARY 1908.

The Council met at 3 P.M.

PRESENT.—All except Messrs. Kantharaj Urs and Rai Bahadur M. Mutha

CLAUSE 7.

PRESIDENT.—The first item of business for consideration this day is the amendment which Mr. C. Srinivasiengar undertook to draft in respect of clause 7. Mr. Srinivasiengar will please move the amendment.

MR. C. SRINIVASIENGAR.—With reference to yesterday's discussion, it seemed to me that the clause as drafted was somewhat defective, and I was asked to prepare a fresh draft for the consideration of the Council. This I have done and with the permission of the President I beg to move as follows

The following be substituted for clause 7:—

7 (1). The Deputy Commissioner or Assistant Commissioner may, of his own motion or on complaint and after enquiry, fine, suspend, dismiss or remove any holder of a village office whether in an unalienated or alienated village, for misconduct, or for neglect of duty, or for incapacity, or for non-residence in the village except with the permission of the Deputy Commissioner or for any other sufficient cause, provided that any order of dismissal or removal passed by an Assistant Commissioner shall be subject to the confirmation of the Deputy Commissioner.

(2) The Amildar or Deputy Amildar may, of his own motion or on complaint and after enquiry, fine, or subject to the confirmation of the Deputy Commissioner or Assistant Commissioner, suspend any holder of a village office,

whether in an unalienated or alienated village for any of the causes specified in sub-section (1).

(3) The holder of an alienated village or where there are more such holders than one, any one of them, or the agent of such holder or holders may, when duly authorized in that behalf by a commission issued by the Government in the form of Schedule A, exercise in the village aforesaid and in respect of all or any particular offices specified, and without prejudice to the exercise by the Deputy Commissioner, Assistant Commissioner, Amildar and Deputy Amildar, of the powers respectively vested in them, by sub-sections (1) and (2), all or any of such powers of an Assistant Commissioner, Amildar or Deputy Amildar under those sub-sections, as may be conferred upon him by the Commission.

(4) The officer or person taking action against a village officer under any of the preceding sub-sections shall hold the enquiry himself, record his proceedings in writing, and furnish a copy of his order to such village officer. When such order is passed by the holder of a commission under sub-section (3), the proceedings together with a copy of the order shall also be forthwith reported by him to the Deputy Commissioner or Assistant Commissioner through the Amildar or Deputy Amildar for information and record, or for confirmation, as the case may be.

(5) The Deputy Commissioner may declare, under rules made under Section 23, that the dismissal or removal of any village officer, whether in an unalienated or alienated village and whether ordered by himself or confirmed by him, shall entail a forfeiture of the right of succession of all undivided members of the family of the officer so dismissed or removed.

(6) Fines and suspensions under sub-sections (1), (2) and (3) shall be subject to such limitations as may be laid down by Government by rules made under Section 23.

(7) All fines imposed under this section shall be recoverable as arrears of land revenue, the recovery in the case of fines payable by village officers in alienated villages being made with the assistance of the Deputy Commissioner rendered as far as may be in the manner laid down in Section 98 of the Mysore Land Revenue Code.

(8) All fines levied under this section in an alienated village shall, after meeting losses and expenses, if any, be appropriated to such work or works of local public utility as may be approved by the Deputy Commissioner."

II. In clause 16, sub-clause (2), the words "and from every order passed by a holder under sub-section (3) of Section 7" be omitted and the following added as sub-clause (3):—

"The provisions of sub-sections (1) and (2) shall apply *mutatis mutandis* to appeals from orders passed by the holder of a commission under Section 7."

III. The following schedule be added:—

SCHEDULE A.

"The form of commission to be issued to the holder of an alienated village or to one of several holders thereof or to an agent under Section 7 (3)."

(Seal)

"The Government of Mysore is pleased to confer on you (holder, one of several holders, or agent, as the case may be), power to punish village officers in the village of to the extent described below.

(Here enter description.)

The within delegated power is vested in you during the pleasure of, and s to re-call by, the Government of Mysore.

Secretary."

Sir, sub-clause (1) of the amendment is almost the same as sub-clause (1) in the draft bill.

As regards sub-clause (2), the difference between the bill as drafted and the amendment I propose is this. I have added a provision empowering the Amildar and Deputy Amildar to suspend a village officer in certain cases subject to the confirmation of a higher authority, while according to the draft, these officers have power only to fine. It seems to me that they may well be trusted with the higher power of suspending, subject to certain restrictions to be imposed by rules framed under Section 23. Then again, the present sub-clause makes a distinction

between patel, shanbhog, toti and talari, and other village officers, whereas the amendment I propose is that the Amildar and Deputy Amildar may be authorized to deal with all village officials in the same way both in unalienated and alienated villages so far as fine and suspension are concerned, subject to the limitations hereinafter mentioned.

Sub-clause (3) of the amendment. This is a new provision and the question was discussed to some extent yesterday. As the original draft stands, there is difficulty in making a selection. To obviate this, I propose that a commission be issued to the holder, if there is a single holder and if he is trustworthy; or if there are more than one holder, to such one of them as deserves the confidence of Government, or to their agent, and the commission may be in a form which is somewhat similar to the one now issued under Section 99 of the Land Revenue Code. The Commission, however, is liable to be recalled at the pleasure of Government, when Government is satisfied that the privilege has been abused. Provision for this has been made in the form I have referred to in Schedule A. There will be no distinction between one class of village officials and another; and the holder, or one of the holders, or the agent, that is to say, the person who holds the commission from Government will be entitled to deal with all village officials in the same way as an Amildar or an Assistant Commissioner if he is given the necessary powers. He can deal with them to the same extent as an Assistant Commissioner can, or to a smaller extent, as the case may be. This will necessitate a small modification being made in the clause relating to appeals.

Sub-clause (4) of the amendment. When the punishment is only fine, the order passed by the holder of a commission will go to the Amildar or Deputy Amildar, and through him to the Assistant Commissioner or Deputy Commissioner, for information and record. But if it is a case of suspension and the holder of the commission has only the limited powers of an Amildar, his order will be subject to the same restrictions as that passed by an Amildar. If he has the powers of an Assistant Commissioner, his order will be subject to confirmation by the Deputy Commissioner. So, as soon as he passes an order, he will send a copy of the order and the proceedings to the Assistant Commissioner or to the Deputy Commissioner for file or for confirmation by competent authority, as the case may be.

Sub-clause (5) of the amendment is almost the same as that contained in the bill with only a small verbal addition, *viz.*, "and whether ordered by himself or confirmed by him," as provision is made for confirmation of an order of dismissal or removal passed by an Assistant Commissioner and when the Deputy Commissioner confirms the order, he is entitled to make a declaration that the heirs of the person dismissed or removed shall forfeit the right.

Sub-clause (6) of the amendment. Up to what amount a fine may be inflicted by the respective officers, and to what extent the duration of suspension may continue are to be regulated by rules to be framed under Section 23.

Sub-clause (7) of the amendment. A superior holder of land is now privileged to go to the Deputy Commissioner and ask for his assistance for recovery of rent or land revenue from inferior holders. To the extent possible, the same procedure is to be applied for the recovery of fines and for orders passed by holders of commission. He may apply to the Deputy Commissioner for similar assistance as in Section 98 of the Land Revenue Code.

Sub-clause (8) of the amendment. This is novel. It is just possible that there may be some holder of a commission who in order to enrich himself might pitch the fine too high. Whatever it is, there is no harm in providing against such abuse. If the holder sustains any loss in consequence of the misconduct of the official punished, the fine will go to compensate him. If there is any excess, the Deputy Commissioner will decide for what purpose it is to be utilized.

Amendment proposed to clause 16, sub-clause (2). Provision is made in clause 16, sub-clause (2) of the bill, for appeal to an Assistant Commissioner from the order of a holder, and it is declared that his decision shall be final. Under it, a holder has power to inflict fine only. Now as he may be invested with the enlarged powers of an Assistant Commissioner, appeals from his orders have to be regulated accordingly. So I propose the deletion of the words "and from every order passed by a holder under sub-section (3) of Section 7", in clause 16, sub-clause (2), and the addition of a new sub-clause (3) to the following effect:— "The provisions of sub-sections (1) and (2) shall apply *mutatis mutandis* to appeals from orders passed by the

holder of a commission under Section 7." If the holder exercises the powers of an Assistant Commissioner, the appeal will go to the Deputy Commissioner, and if the Deputy Commissioner deals with it, there will be another appeal to the highest Revenue authority. Thus appeals from orders passed by holders will be regulated in the same way as appeals from orders passed by Amildars and Assistant Commissioners.

The schedule is taken from Schedule (*f*) in the Land Revenue Regulation with suitable alterations.

My object in framing this amendment is to deal with the question as a whole and to give Amildars and Deputy Amildars more control over village officers in alienated villages than is proposed to be given in the draft before the Council and also to give the holders of alienated villages more hold on their village officers. At the same time, there are a large number of cases in which there are more holders than one and they are at variance, and it is extremely difficult for a majority of them to concur and make a single nomination, and unless the powers are vested in a single person, it will be impracticable to carry out the provisions of this section; either there must be one holder or if there are more holders than one, they should combine and appoint one man and get Government to recognise the appointment; or Government, in consideration of the circumstances of the case, should themselves, irrespective of the consent of the holders concerned, make an appointment. There may also be cases in which an agent may be appointed and given a commission whether there is one holder or several holders. This is the most important of the several points dealt with. The commission will not take away from our officers the powers vested in them, and they may continue to exercise those powers. The holder, or one of several holders or the agent is also to be empowered to punish, without prejudice to the powers already vested in the Revenue officers.

MR. T. ANANDA RAO.—I endorse all that Mr. Srinivasiengar has said and second this proposition with one small amendment. With regard to fines, it is a complicated procedure to allow them to be collected as arrears of land revenue with the assistance of the Deputy Commissioner. A great difficulty is the purpose to which the fines should be devoted. It is better to abolish the power of fining proposed to be given to holders of alienated villages. They may be given power to suspend, but the power to fine must be taken away from them. For the recovery of one or two annas fine, a very complicated machinery has to be set in motion.

MR. NAGAPPA.—I endorse what Mr. Ananda Rao has said and also what Mr. Srinivasiengar has said as to commissions being issued, but I think the dual authority given to the holder and the Revenue officer will work as a hardship. In the same locality, both officers will exercise the same powers.

As to the question of fine, it is necessary to invest the holder of a commission with power to fine; but I do not quite approve of Mr. Srinivasiengar's suggestion contained in sub-clause (8) as to how the fine is to be utilized. It seems to me that it should go to the improvement of tanks, if any, in the holder's village or to the holder himself. It is highly necessary that we should not interfere with the internal management of the village by the holder. At the same time, the efficiency of the public service requires that patels and shanbhogs should be required to perform their duties satisfactorily. Only so far as efficiency is concerned, the legislature may interfere with the internal management of an alienated village. I would rather omit the words "public utility" in sub-clause (8) of the amendment and say "shall be appropriated to such works as are calculated to improve the tank in the alienated village." With these observations, I submit that the amendments proposed by Mr. Srinivasiengar may be adopted.

MR. RANGIENGAR.—The first clause of the amendment is merely a reproduction of the clause recommended by the Select Committee. In the second clause of the amendment, alienated and unalienated villages are clubbed together, and as remarked by Mr. Srinivasiengar, all the servants in an alienated village are brought within the jurisdiction of Revenue Officers. It is not advisable to place all the servants of the village, without describing who they are, within the jurisdiction of Revenue Officers. Certain village officers of an alienated village come into contact with public servants, and in relation to their work, Government has an interest; but Government is not interested in every kind of village officers in an alienated village and ought not to have anything to do with the maintenance of discipline of those servants with whom it does not come in contact. This was discussed in the Select Committee and we

particularised the servants over whom power should be exercised, because the natur of their work brought them into contact with Revenue Officers. It was therefor that the Amildar or the Deputy Amildar was given power to inflict fine or otherwise punish these servants. In the proposed amendment, they are not particularised.

Clause 3 of the amendment is also open to certain objections. An agent is a person appointed by the inamdars or vrittidars. He may be appointed for one or two years. His tenure of office is not permanent. If a commission is issued in his name, and he is removed, then the commission will have to be recalled and another commission issued in favor of another person. It will entail a good deal of work upon Government and Government will find it inconvenient to deal with successive agents. The holders are not required to be consulted in the matter. It is possible that an agent may make himself obnoxious to the inamdars or a large majority of them. If Government invests him with the powers of an Amildar or an Assistant Commissioner, the inamdars may determine the agency and of what avail then will the commission issued by Government be? If the new amendment contained any provision for consulting the wishes of the inamdars, then there would be some guarantee that the commission would hold good for some length of time. But as it stands, it is open to these objections.

As regards the recovery of the fine, I am quite at one with the First Councillor in saying that the rule that is proposed to be enacted will be found very difficult to work and very complicated, and rather than introduce so much complicacy into the Regulation, I would support the suggestion made by Mr. Ananda Rao that power to fine may not be given to the holder of an alienated village.

Then as regards what should be done with the fine; that again is a very difficult question and the learned mover has himself admitted his suggestion to be a novel one. If we cannot allow the holder of an alienated village to appropriate the fine, then we had better not give him any power to fine. It is not likely that he would unnecessarily or vexatiously fine his servants, and if any such fine is imposed, it is open to the Deputy Commissioner to set it aside. We need not have any apprehension that the holder will maliciously impose fines with the object of enriching himself.

Then with regard to appeals, the learned mover of the amendment proposed certain alterations. But before these alterations are incorporated in the bill, I submit that there should be provision made for an appeal being preferred and then it may be said that appeals lie in such and such a manner. In the first instance, we must provide for an appeal. In clause 16, sub-clause (2), we provide that an appeal shall lie, and this clause Mr. Srinivasiengar has amended.

I submit the amendments now proposed are open to these objections.

MR. C. SRINIVASIENGAR.—Sub-clauses (1) and (2) of clause 16 provide for appeals.

MR. A. RANGASWAMI IYENGAR.—I think the consideration of this clause will be facilitated if we divide it into two portions. As it is, I understand that the amendments proposed by Mr. Srinivasiengar have the general approval of the members. There have been many minor amendments proposed by different members in respect of the different sub-clauses. It will be somewhat confusing, I think, to discuss all these amendments before the amendments proposed by Mr. Srinivasiengar are accepted or rejected as a whole. The main point is whether the re-drafting of the clause as proposed by Mr. Srinivasiengar is acceptable or not to the Council. If it is, it may be carried in the first instance; subject to the wording of each sub-clause being considered later. That will facilitate the progress of business. I believe that the amendment proposed is certainly an improvement. It will, as explained by Mr. Srinivasiengar, remove many small defects that existed in the clause as it originally stood, and I would therefore recommend that the whole of it be accepted. If this procedure is followed, the amendments proposed by the other members may be taken later on; otherwise I will proceed to make my remarks on the objections that were raised.

PRESIDENT.—My idea was to have the whole thing discussed. There is a general agreement, I believe, as regards the suitability of the amendments proposed by the mover, and the idea was, after discussing the details, to read the several sub-clauses and ask for the opinions of the members as to passing each one of them.

MR. A. RANGASWAMI IYENGAR.—If that is the case, then the sub-clauses may be taken one by one.

PRESIDENT.—Sub-clause (1). I believe that so far as this sub-clause is concerned, we are agreed to accept it as it stands.

MR. RANGIENGAR.—I would particularise the servants of the alienated village.

PRESIDENT.—This is a further amendment. Will you please read your amendment?

MR. RANGIENGAR.—"In an unalienated village, or the patel, shanbhog, toti and talari in an alienated village."

MR. NAGAPPA.—I second it. It is not necessary for the Assistant Commissioner to punish the nirganti and other servants.

MR. RANGASWAMI IYENGAR.—I am not in favor of this amendment for this reason. By the very definition and scope of the bill, it deals with only five classes of village servants. Mr. Rangiengar himself has no objection to four of these being punished by the Deputy Commissioner and Assistant Commissioner The fifth is only the nirganti who, seldom comes into contact with revenue officers. Very little distinction is made between the duties performed by toti talari and nirganti in an alienated village. I think it is better to leave the sub-clause in this indefinite and comprehensive way than to minutely describe the names of the village officers, especially as it refers to the powers of higher officers such as Assistant Commissioners and Deputy Commissioners who are responsible for the efficient administration of a large area.

MR. V. N. NARASIMMIYENGAR.—I beg to say, Sir, that the proposed legislation refers virtually to the Government servants in each village in contra-distinction to the artisans. These Government servants are only five in number; they are known in different places by different names, but all can be classified under five heads, *viz.*, shanbhog, patel, toti, talari and nirganti. The amendment proposed by Mr. Rangiengar refers only to the nirganti. He is quite agreeable to the other four kinds of servants being brought under the jurisdiction of Revenue Officers. He would only exclude the nirganti. It is quite possible, I think, in the course of revenue administration, that the Deputy Commissioner may have something to say to the nirganti as regards waste of water, etc., and I see no sufficient reason to exclude the nirganti. So I am favor of Mr. Srinivasiengar's amendment.

MR. SYED AMIR HASSAN.—I support it.

Mr. Rangiengar's amendment was put to the meeting, but was not carried.

PRESIDENT.—Before we finish with this sub-clause, I should like to suggest a nall improvement in the wording of it. Instead of "except with the permission of ıe Deputy Commissioner," I think it will be an improvement to have "except hen such non-residence is permitted by the Deputy Commissioner."

This suggestion having been put to the Council was adopted unanimously.

PRESIDENT.—Then we come to sub-clause (2). Are there any amendments) this sub-clause? It will be noted that the power of suspension is proposed to be ven for the first time in this sub-clause. It was not in the original bill or in the nended bill as presented by the Select Committee. If the Council is agreeable to iis sub-clause also being passed, we will proceed to the next.

This was also adopted.

PRESIDENT.—Sub-clause (3) of the amendment. Mr. Rangiengar objects to the ɜent being recognised.

MR. RANGIENGAR.—As I submitted to the Council, if the commission is to be sued without a reference to the inamdars and without consulting their wishes in ıe matter, it may so happen that very soon after the commission is issued, the ɜent may cease to be such, and then the commission will be of no avail. I submit that in this sub-clause as proposed by Mr. Srinivasiengar, certain amendments are necessary to guarantee the continuance of the commission for some time at least. In the case of a commission being issued to the holder of an alienated village, or to one of its holders, there will possibly be no difficulty, because the Deputy Commissioner will take into account the qualifications of the several holders. But in the case of the agent whose office itself is very precarious, to give the commission to

the agent without consulting the wishes of the inamdar will be productive of much inconvenience.

MR. A. RANGASWAMI IYENGAR.—This is only an inconvenience in detail, and it is not difficult for us to imagine cases where the agents may be the nominees of the holders themselves.

PRESIDENT.—There is nothing in the clause to imply that the commission is to be given without consulting the wishes of the holders.

MR. A. RANGASWAMI IYENGAR.—Unless the agent carries some prestige or authority with him, he will not be able to carry on the work. The idea is to give power to the holders of inam villages to enforce due subordination on the part of their village servants.

PRESIDENT.—Is the amendment that the word "agent" be omitted from this sub-clause seconded?

MR. RANGIENGAR.—I would suggest that the expression "the agent or such holder or holders appointed in consultation with them" be used.

PRESIDENT.—This is a well drafted sub-clause. Nothing is fixed here. It provides for powers being given with regard to the several officials of each village, and Government will determine what power shall be given, and with regard to what officers. All the powers that may be given are not proposed to be given. There is discretion given to Government as to the kind of powers to be given, and also as to the officers with regard to whom these powers should be given.

MR. RANGIENGAR.—I want to know whether for the same offence, a servant may be punished twice, because the inamdar may punish the servant and the Amildar or Deputy Amildar may also punish him. We may attribute some amount of common sense to them, but there is no knowing what may happen in some peculiar combination of circumstances.

MR. A. RANGASWAMI IYENGAR.—I was going to suggest whether it was necessary to have this sub-clause at all. I think it is not required. The whole of it may be eliminated without any disadvantage.

PRESIDENT.—But, this is a very happy way of dealing with the thing, reserving discretion to Government as to the class of officers to be dealt with under this commission, and also of the kind of powers to be given to the holders.

The Council agreed to adopt sub-clause (3).

MR. K. P. PUTTANNA CHETTY.—I would ask whether it is proper to invest holders of alienated villages with power to fine. The First Councillor took exception to it, but this sub-clause includes it as a matter of course.

PRESIDENT.—We will now take up the question of giving holders of alienated villages the power of fining village officials.

MR. ANANDA RAO.—In Madras, the holders have no such power: and we may adopt the same practice here also.

MR. SRINIVASIENGAR.—Fine was the only punishment provided by the Select Committee, and I have retained it and added to it. It is the least severe punishment.

PRESIDENT.—The difficulty in Madras was in finding the fund to which the fine ought to go.

MR. RANGASWAMI IYENGAR.—Fine is the lowest kind of punishment. With all that, there is the right of appeal to the Deputy Commissioner. A punishment of fine can always be reconsidered. And then Government has the power of limiting the levy of fine.

PRESIDENT.—The question of investing a holder with power to fine was in issue in the Madras Legislative Council and the members unanimously voted against it.

MR. RANGASWAMI IYENGAR.—There is not the same connection between Revenue officers and holders of villages in Madras as there is in this State. There is always an opportunity for the party concerned going to the Revenue officer and getting the propriety of the fine reconsidered. And also, that the difficulty in finding a fund to which it should be credited should be advanced as a reason for not imposing a fine is rather an impotent conclusion in my opinion.

MR. AMIR HASSAN.—The difficulty arises when the inamdar himself fines his servant. But if the fine is imposed by the Amildar, the difficulty does not exist.

[The minutes of the Proceedings of the Madras Legislative Council referring to the question at issue were read by the Secretary.]

MR. ANANDA RAO.—It is rather awkward that the officers of Government should help the holder in having to execute his own order against his servant. It would be a different thing where the commission to collect revenue under the Land Revenue Code is given to him.

MR. NARASIMMIYENGAR.—If the holder has to go all the way to the Amildar to request him to fine his own village servant, what respect can the holder command? The object of the bill is to strengthen the hands of the holder. The holder can be invested with the power to fine, subject to such restrictions and control of the Revenue Officers as may be prescribed. As the Revenue Commissioner said, fine is the easiest penalty. If he can suspend his servant, why should he not fine him also? Besides, the servants are paid out of the potgi.

MR. S. NARAYANA RAO.—There is another way of looking at the question. A jodidar or inamdar to some extent represents Government so far as his village servants at least are concerned. He exacts from them such work as they would have rendered to Government, had the inam not been granted and so any fine which he may impose upon his servants for neglect of any duty, takes the form of a punishment inflicted by Government and therefore it should go to the Government Treasury.

MR. NARASIMMIYENGAR.—It is well recognized that the inamdar stands in the place of Government in his village.

MR. PUTTANNA CHETTY.—It is worth considering whether the fine may not be made subject to confirmation by the Deputy Commissioner. The fine will have to be levied by the Amildar. There is greater chance of the power being well used by the commission holder.

MR. NAGAPPA.—It is very desirable to invest the commission holder with the power of fining. When the Government issues a commission to him, he may be considered to be qualified to exercise such power. As pointed out by the Revenue Commissioner, the destination to which the fine should go should not stand in the way of the holder being invested with the power to fine.

MR. NARASIMMIYENGAR.—Except revenue from excise, sandalwood and sundry other things, all other income from the village goes to the inamdar. While such is the case, if the fine imposed should be decided to go to the public treasury, will it not be an encroachment upon his property?

MR. RANGASWAMI IYENGAR.—Fine is not a revenue.

MR. ANANDA RAO.—I should think that the rule as to dealing with the fine when collected should follow that as to receipts from the cattle-pound of the village.

MR. RANGASWAMI IYENGAR.—There is another aspect of the case. These fines are payments for failing to do a duty. As a penalty for neglect of duty, these fines ought to go to the public treasury.

PRESIDENT.—So you have no objection for retaining this concurrent jurisdiction.

The Council agreed to it.

PRESIDENT.—Then as regards fine, shall we say that the fine levied by the holder of an alienated village will go to the public treasury?

This was accepted by the Council.

PRESIDENT.—We have to provide for another matter also. An Amildar has no power at present to punish a village officer—patel or shanbhog, when he does not reside in the village. Whether this power should be given to him has to be settled.

MR. RANGASWAMI IYENGAR.—I have to suggest something with regard to this. It would perhaps be better if, instead of allowing the Amildar and others to punish the village officers for incapacity, non-residence, etc., they are allowed to punish only for misconduct and neglect of duty. There can be summary procedure only in these matters. The other causes can be more leisurely dealt with by a higher authority. Hence, for the words "for any of the causes," the words "for misconduct and neglect of duty" may be substituted.

The Council unanimously agreed to this.

PRESIDENT.—We will proceed next to sub-clause (4) of the amendment. I think this is unobjectionable.

MR. RANGASWAMI IYENGAR.—If the sub-clause is taken to mean that all proceedings of enquiry including fine are to be reported, it will have the effect of throwing too much work on the holder of a commission. For confirmation of course, it will do. I would suggest that all proceedings, except in the case of fine, shall be reported for confirmation.

MR. NAGAPPA.—It does not much matter. Only the action taken is to be reported and not the entire record. The commission holder may report the full proceedings, so that the authorities may find ample material for seeing whether the power is rightly used.

MR. RANGASWAMI IYENGAR.—I find it difficult to understand the word "report." Perhaps it means "report the action taken."

MR. SRINIVASIENGAR.—He need not forward the record of the enquiry but only report the proceedings or action taken.

MR. ANANDA RAO.—It often happens that only a copy of the bare order passed is given; and this is insufficient to go upon.

MR. SRINIVASIENGAR.—In that case, other papers will be called for and the legality of the order tested by the higher authorities. There is no harm in retaining the wording as it is.

The Council agreed to adopt sub-clause (4) as framed by Mr. Srinivasiengar. Sub-clauses (5) and (6) were also unanimously adopted.

PRESIDENT.—Sub-clauses (7) and (8). I think sub-clause (7) may be modified as follows, and sub-clause (8) omitted.

"All fines imposed under this section shall be recovered as arrears of land revenue, the recovery in the case of fines payable by village officers in alienated villages being made by the Amildar and credited to the public treasury."

The Council agreed to the above.

CLAUSE 8, SUB-CLAUSE 1 (*f*).

MR. NAGAPPA.—Sir, I beg to move that the words "or of his being insolvent and unable to maintain his position" be added at the end of sub-clause (1) (*f*). In doing so, I beg leave to say that this bill does not provide for a property qualification in the case of village officers. The present practice, I believe, is that persons who do not possess lands or other properties in the village are seldom or never appointed as patels.

There has been much discussion of late regarding the relative advantages of having stipendiary village officers as opposed to hereditary officers. The advantages of having hereditary officers were found by experience to be greater, both as regards the prestige and influence commanded by them with the villagers and their reliability as custodians of Government revenue. Any village officer, who does not possess good character and has no property qualification, cannot possibly command the local influence and respect of the villagers, and the appointment of such an officer will not tend to advance the efficiency of the village service. I apprehend that the appointment of a pauper as patel will lead to serious consequences, and, I believe, it is against public policy. In deference to the opinions expressed by veteran Revenue Officers, Government have wisely passed Proceedings No. 641-37, dated the 17th April 1886, to the effect that a pauper cannot be retained in a pateli office. It is undesirable to do away with the present practice. I therefore propose this amendment.

MR. RANGASWAMI IYENGAR.—I should say that it is a very good suggestion and that it may be brought in at the end of sub-clause (1) (*e*).

MR. ANANDA RAO.—This question was brought before the Select Committee and we thought it would come under "antecedents." If the general impresssion now is that it should be added, we may add it.

MR. PUTTANNA CHETTY.—Several cases have come under my notice of patels being paupers, and they were removed from office and suitable persons were appointed in their stead. I think the suggestion made by Mr. Nagappa is a very good one, that paupers and insolvents should be excluded from the offices of patel and shanbhog.

MR. NAGAPPA.—As an alternative, I would submit that the portion relating to insolvency may be retained, and the other portion of the amendment omitted. We may add "is an insolvent" in (*e*). This clause also gives ample discretion to the Deputy Commissioner; so, there is not much difficulty.

PRESIDENT.—I don't like that the word "antecedents" should be kept on. We may say that on the ground of his character not being good, he may be disqualified. However we shall reserve this for consideration to-morrow.

MR. SYED AMIR HASSAN.—I beg to withdraw the amendment I intended to move with regard to this sub-clause.

CLAUSE 8, SUB-CLAUSE (2).

MR. NAGAPPA.—I would request that the amendment I have suggested to this sub-clause be taken up when we deal with clause 11.

CLAUSE 8, SUB-CLAUSE (3).

MR. NAGAPPA.—Sir, I beg to move that at the end of sub-clause (3), a semi-colon be substituted for the full stop, and the following words added, "provided that when the next heir is not qualified under Sub-Section (1), clause (*d*), at the time of succession, he shall be given a period of not less than three years to qualify himself."

It has generally been the practice of nominating a competent person in all cases of incompetency of the officiator in direct hereditary succession, such nomination to hold good in the case of a minor till the end of the period of his minority, in other cases, for three years, when the nomination will revert to the hereditary family, if a competent person can be found therein. (*Vide* Rule XXX of the revised rules for the remuneration of patels and shanbhogs, which have the force of law in Mysore.) It will be a hardship upon the rightful person entitled to succeed, if he is deprived of the right for want of educational qualification only at the time of filling up the vacancy, although he may become fully qualified subsequently. There is apparently no reason assigned why this new departure from the recognised practice should be adopted.

I am of opinion that the above quoted rule should be given effect to in this Regulation. I therefore propose the amendment.

MR. PUTTANNA CHETTY.—We cannot expect educational qualifications from every patel, until we extend our general educational scheme to all villages. As to the granting of time for acquiring the necessary qualifications, the potgi rules cannot be ignored.

MR. RANGASWAMI IYENGAR.—The Potgi Rules refer to the first appointment.

MR. SRINIVASIENGAR.—The hereditary principle is stretched too far in the proposed amendment. You say he has no educational qualifications, and yet he must be given three years' time.

MR. ANANDA RAO.—There is one point for consideration. In the Potgi Rules, the contention is between a stranger and the next of kin. But the amendment applies also to a contention between the kins themselves.

Mr. Nagappa was requested by the President to draft a suitable clause and bring it before the Council the next day.

The Council adjourned to the following day, 26th February 1908.

WEDNESDAY, 26TH FEBRUARY 1908.

The Council met at 1 P.M.

PRESENT.—All except Mr. Kantharaj Urs.

CLAUSE 8, SUB-CLAUSE (1) (*f*).

PRESIDENT.—The first thing we have to deal with to-day is the amendment of sub-clause (1) (*f*) of clause 8. "By reason of his bad character or antecedents" was the original draft, and Mr. Nagappa proposes an amendment.

MR. NAGAPPA.—I beg to move that for sub-clause (1) *(f)* of clause 8, the following be substituted:—"Has been adjudged by the Deputy Commissioner or Assistant Commissioner to be of general bad character or declared by a competent court to be insolvent."

Sir,—This amendment is desirable. The word "general" is added for the following reasons. Evidence of rumours in a particular place that a man has committed several offences on several occasions, that he has *budmashes* under him to assist, and generally that he is a man of bad character is no evidence of general bad character. Evidence of rumours is mere hearsay evidence of a particular fact. Evidence of repute is a different thing.

A person's general reputation is the reputation he bears in the place where he resides amongst all the townsmen, and if it is proved that such a person is looked upon by his fellow townsmen as a person of good repute, that is strong evidence that he is a person of good character. On the other hand, if the state of things is that the body of his fellow-townsmen who know him look upon him as a dangerous person and of bad habits, that is strong evidence that he is of bad character.

It can hardly be said that a person possesses generally a bad character merely because there are rumours in a particular place among a certain class of people that a man has done particular acts or has characteristics of a certain kind.

This is the interpretation given to these words occurring in some of the Codes. This, I believe, is the right interpretation.

Besides, these words are used, I submit, in the same sense in Bombay Act V of 1886, Section 45. It would be better, therefore, to adhere to the same phraseology in our Regulation.

The word "adjudged" is better than the words "in his opinion disqualified, etc.," as used in the present clause. For the word imports "to award judicially, in the case of a controverted question," or "to declare by a judicial opinion or sentence;" as the case was adjudged in Hilary term.

It necessarily implies that the officer should hold judicial enquiry and pass his order. It is in this sense the word is used in Bombay Act, V of 1886, Section 45.

Here in clause 8, it is not provided what inquiry the Deputy Commissioner has to hold and how he has to form his opinion. The section as it stands is "is in the opinion of the Deputy Commissioner disqualified." For the matter of that, he may not hold any inquiry at all. If so, what material is there for an appeal against his order? It is not incumbent upon him to hold an inquiry. But if the person is to be adjudged to be of bad character, the Deputy Commissioner should hold an inquiry and give his reasons for saying that he is of bad character. Then there would be materials on record for appeal.

In "adjudged insolvent," the word "adjudged" means declared or adjudicated by a competent court to be insolvent.

For these reasons, I submit that the amendment may be adopted.

MR. SRINIVASIENGAR.—In the Bombay Act the section is well expressed and suits all our purposes. Character, circumstances in life, etc., have all to be taken into consideration by the Collector. And the Bombay wording will meet all requirements. It is sufficiently comprehensive. There will be enquiry held; and the manner of enquiry is laid down, under which will come several circumstances which go to hold whether the man is of general bad character or not.

PRESIDENT.—Is it the sense of the Council to adopt Mr. Srinivasiengar's proposal?

MESSRS. SRINIVASIENGAR and NARAYANA RAO.—The section in the Bombay Act may be adopted with the necessary changes suited to Mysore.

PRESIDENT.—Then the section will stand thus:—"Has been adjudged by the Deputy Commissioner or Assistant Commissioner after a summary inquiry held in accordance with the provisions relating to summary inquiries contained in the Mysore Land Revenue Code of 1888 to be of general bad character."

This was agreed to by the Council.

CLAUSE 8, SUB-CLAUSE (3).

MR. NAGAPPA.—I beg to move that the comma after the words "under sub-section (1)" in this sub-clause be substituted by a full stop and the following words added :—

"And provided that when the next heir is not qualified under sub-section (1), clause (*d*) at the time of succession, he shall be given a period of not less than three years to qualify himself."

In this connection I beg to bring to the notice of the Council the Madras Board's Proceedings No. 408, dated 22nd November 1897.

It has generally been the practice to nominate any competent person in all cases of incompetency of the officiator in direct hereditary succession. "Such nomination to hold good in case of a minor till the end of the period of his minority; in other cases for three years, when the nomination will revert to the hereditary family, if a competent person can be found therein." (*Vide* Rule XXX of the Revised Rules for remuneration of patels and shanbhogs which have the force of law in Mysore.)

It works hardship upon the rightful person entitled to succeed if he is deprived of his right for want of educational qualification only at the time of filling up the vacancy, although he may become fully qualified subsequently. There is apparently no reason assigned why this new departure from the recognised practice should be adopted.

I am of opinion that the above quoted rule should be given effect to in this Regulation. I therefore propose the amendment.

I have made some changes here in regard to suits. Here no suits are necessary, but a mere inquiry by the Deputy Commissioner will do. Perhaps it may be safer to stick to the same wording. But I have made changes suited to Mysore conditions.

MR. SRINIVASIENGAR.—I would propose a very short addition to this clause. After "sub-section (1)" in sub-clause (3) put a comma instead of a full stop and add :—

"Subject to the appointment terminating and the office reverting to the family of the last holder at the end of three years, if a duly qualified person from that family should then be found forthcoming."

MR. RANGASWAMI IYENGAR.—I would suggest another amendment. At the end of sub-clause (3), add :—

"The appointment of such person shall hold good for three years and shall become permanent thereafter if no qualified person with hereditary claims be found in the meantime."

The reason why I refer to the hereditary claim is this. Very often there are hakdars not only in the line of the family of the last holder, but there are also joint hakdars. We have made provision for the claims of the members of such families also being considered. So it would be better to leave the section general, with the words "hereditary claims."

PRESIDENT.—Because the person (heir) is not duly qualified, we bring in a stranger. As soon as the person becomes qualified, the stranger's appointment will cease. So the person who is to hold the appointment permanently is indicated, but a stranger steps in pending the heir qualifying himself.

MR. RANGASWAMI IYENGAR.—There may be a person in the family who may have left the place, who may be unheard of at the time, but who may be found within three years.

MR. SRINIVASIENGAR.—A single heir has been provided for. If there are several bearing the same relationship, the eldest of them is selected and then the next and so on. Thus we exhaust the list of persons within the family and if there be none forthcoming, we go out of the family for selection. But if one in the family afterwards comes forward, duly qualified, he is selected.

MR. RANGASWAMI IYENGAR.—Yes. But there may be others also who may have hereditary claims, but who may not be found then. For instance, for the shanbhogi *hak*, there was one who was holding the appointment and he is now dead. You find

out one who is to succeed. There may be others who may have a claim for the same. We have made provision for the consideration of their claims.

PRESIDENT.—I think we have lost sight of the object of enacting sub-clause (3). It is only when the next heir is found unqualified, we extend the selection further and include all those people of the eldest branch, of the collateral branch and so forth. And even when that person is found not qualified, we are so tender to the principle of hereditary succession, we say that the stranger to be appointed shall hold office only for three years and the moment the heir qualifies himself, the stranger's appointment shall cease. We exhaust the list of heirs before going to the stranger and why bring in the question of a member of the family again?

MR. RANGASWAMI IYENGAR.—If I understand it aright, it means that it applies only to the temporary disqualification of the next heir.

PRESIDENT.—We first of all select the next heir, and in selecting the next heir we go to the collateral families also and even when all possible search is made one who is qualified, is not found, there is yet a further field for selection; and even when such a person to be found in the family of the hakdar is not qualified, we propose to appoint a stranger. In fact, I do not know if we may not stop with that and omit the proposed amendment altogether. This sub-clause itself contemplates going in search of some qualified hereditary man entitled to succeed, in virtue of his belonging to the family when the next heir is not qualified.

MR. RANGASWAMI IYENGAR.—What I mean is this. Potgi rules contemplate the appointment of somebody with a *hak*. When such a person is appointed, even if a man with stronger claims has been overlooked, that appointment is not interfered with. But if an entire stranger is brought in, then three years' time is given in order that the person superseded by oversight might come and urge his claim. I only tried to explain the idea underlying the provision. If you are disposed to provide for such a view and want to keep the appointment of the stranger as a temporary one for three years, then the best plan will be to keep the succession open for any one with a proper claim to come forward if he is qualified. For instance, it may happen that a person is away on pilgrimage or is not thought of; shanbhogs and patels may have made all enquiries and the name of such person may have been omitted. Two years after, the person might return and lay claim to the appointment. If the appointment is given among the hakdars, then the coming of the man with a better title at a later stage will not disturb the appointment. But if a stranger is appointed, then there is a chance of that man whose claim had to be overlooked by force of circumstances coming forward and claiming the appointment.

PRESIDENT.—It will be truly extending the object of the three years' tenure. The three years' tenure was suggested purely with a view to enable a man whom the Government have found to be the next heir to qualify himself, so that the *hak* may not pass out of the family altogether. Now if the principle is applied to the purpose of finding out if there are any people from the collateral branch who are entitled to the office, I think that will be going beyond the purpose for which that provision was proposed to be made.

MR. RANGIENGAR.—The object stated by Mr. Rangaswami Iyengar is fully secured by Section 11 of this Regulation where it is enacted that the *hak* may be established through a competent Civil Court.

PRESIDENT.—In the first place the necessity of sub-clause (3) is not clear at all. Every possible person in the line of succession or belonging to the family has been exhausted in sub-clause (2), and the claim of every person considered in that sub-clause. Where then is the necessity for the next sub-clause?

MR. SRINIVASIENGAR.—Sub-clause (2) deals with the next heir, that is, immediate heir. When there are several persons in the same category, the eldest is preferred. That is all sub-clause (2) deals with. The claims of hakdars whose names are registered and who are officially recognized as such are also considered in making appointments. Then comes sub-clause (3) which deals with heirs more remote. When the immediate heir is not qualified or is non-existent, then you go to the next, as, for instance, the nephew, grandson, etc. If he cannot be appointed, you go to a more remote heir and if no such remote heir is forthcoming, you go to a stranger. The question then simply is whether the latter is liable to be dispossessed by anybody with a hak or only by the next heir superseded for want of qualification.

MR. RANGASWAMI IYENGAR.—I have to add one word more. Sub-clause (2) refers to the right of a person to succeed having regard to relationship and so forth. Sub-clause (3) refers to his qualifications. In case the man is not qualified under sub-clause (1) what should be done? So sub-clause (3) is also necessary.

PRESIDENT.—You first of all see if the son of the last holder is available. And then you go to collateral branches. So you exhaust every possible claimant to the office in virtue of his claim to succeed in hereditary succession to the last holder and when you have done so and find that the next heir is not qualified, you say that the sub-section provides for the appointment of a stranger and that appointment is proposed to be made only for three years, in order to give time to the proper heir to qualify himself and oust the stranger. When the next heir is not qualified, sub-clause (2) allows of your going to the collateral branches.

MR. RANGIENGAR.—Sub-clause (2) refers only to immediate heirs whether one or more. If the man is found disqualified under one or other of the provisions contained in the earlier part of the clause, then you go to more remote heirs. This is provided for in sub-clause (3). If the heir is not found qualified under sub-clause (1), then sub-clause (3) operates.

MR. NAGAPPA.—Sub-clause (2) is a substantive part of the law which lays down the rule of succession, and sub-clause (1) deals with qualifications. Suppose a person is entitled to succeed under sub-clause (2) but is disqualified under sub-clause (1), what is the procedure to be followed? This is provided for in sub-clause (3). So, that sub-clause (3) lays down the procedure to be followed when the heir entitled to succeed is disqualified.

MR. PUTTANNA CHETTY.—I would call attention to the wording of sub-clause (2). It refers to the devolution of succession and the next sub-clause deals with the question of what should be done when the man on whom the devolution falls is not qualified.

PRESIDENT.—Is not Mr. Nagappa's amendment suitable?

MR. SRINIVASIENGAR.—Sub-clause (*1*) (*d*) does not embrace all disqualifications. Except for this, I have no objection to it. Again "within three years" is not what is intended. "At the end of three years" is perhaps what is meant.

PRESIDENT.—What objection is there to Mr. Srinivasiengar's amendment?

MR. RANGASWAMI IYENGAR.—I want the privilege to be extended to collateral claimants. The idea is that some disqualification may be temporary as insanity, ill-health, long absence and so forth. If within three years the disqualification ceases, the man once disqualified may be admitted again. We close the door against him only temporarily. His claim is liable to be revived as against a stranger who can hold office only for three years. After this period if the proper heir who was temporarily disqualified comes forward as qualified, he may be appointed in the place of the stranger. The claim against a person who was disqualified does not become absolute for three years when a stranger comes to the place. We give him a chance till then to qualify himself. If he does not qualify himself within three years, the claim against him becomes absolute. The stranger is then appointed absolutely. In short, if a stranger comes to the appointment, it does not become final for three years.

MR. RANGIENGAR.—I find that clause 11 contemplates the institution of a suit for the recovery of an office. Any one who claims to have a right to a certain office can, at any time within three years, file a suit if he is not preferred to the office and if he is eligible to be appointed. When the law has thus given him three years to file a suit to establish his claim to the office, I fail to see the necessity for providing here in this section that three years' time should be given to a person passed over by oversight or otherwise, to qualify himself and then to apply to the Deputy Commissioner to register his name as the holder of the office. Three years' time is given under clause 11 of the Regulation. My friends here seem to be under the impression that when he is once passed over by the Deputy Commissioner as disqualified, that order operates, and that it cannot be set aside. I am unable to follow that reasoning. The order of the Deputy Commissioner does not operate as *res judicata*; it is only an order after summary enquiry. On the other hand, this order is liable to be set aside by a decree following the institution of a suit under clause 11 of the Regulation.

MR. NAGAPPA.—The Regulation contemplates two classes of inquiry, one on the miscellaneous side and the other on the regular side. If an order is passed by the Deputy Commissioner on the miscellaneous side, that order cannot be set aside. It is final. No appeal against that order is provided for. Clause 16 contemplates either a decree or order. The decree can always be appealed against. That is the practice. If an investigation has already been made and an order passed by the Deputy Commissioner, the claimant who has been passed over has no remedy, except by way of an appeal.

MR. RANGASWAMI IYENGAR.—Clause 8 contemplates a man being qualified at the time the succession opens. We want now to provide that even when a man is disqualified at that time, he can appear again three years after, duly qualified, after getting over his infirmities, and that his claims will be considered then. If such a man was fully qualified at the time the succession opened and if his claim had not been brought forward, then he will come under clause 11. But if his claims had been considered by the Deputy Commissioner in the summary inquiry and had been rejected, his relief would be an appeal and not a regular suit; so clause 11 gives only a partial remedy and will not cover the classes of cases for which we wish to make provision.

MR. NAGAPPA.—That is exactly my contention. If a person is disqualified at the time the succession opens, but becomes qualified three years after that, he will have no remedy at all under clause 11 unless we make provision for him as in sub-clause (3). Clause 11 only prescribes the procedure. Clause 8 gives the substantive right to the party. If he is disqualified under clause 8, no amount of litigation on his part would entitle him to any relief. He is disqualified altogether under clause 8. We have to provide for the cases of such persons who are temporarily disqualified when the succession opens but subsequently become qualified. It is with that intention that the amendment has been proposed.

MR. RANGIENGAR.—Messrs. Rangaswami Iyengar and Nagappa seem to be under the impression that when the heir files a suit on the ground that when the succession opened he was ineligible but that subsequently he became eligible to the office by becoming literate as set forth in sub-clause (1) of clause 8, he is not entitled to sue. That is not the correct interpretation to be put upon clause 11. It simply says "entitled under clause 8." Clause 8 treats of the devolution of the right. If he is the heir of the last holder of the office under clause 8, then he is entitled to file a suit under clause 11. There is evidently a distinction drawn between "being entitled to the office" and "eligibility" of the candidate. Now, the Council will please consider the distinction in clause 11 between the two. The first is his "being entitled," *i.e.*, under the law applicable to the last holder. The next is his "eligibility" to the office, which is determined by other considerations. When the Deputy Commissioner before whom the suit is filed finds that the plaintiff is not eligible, then the suit is liable to be rejected. In the opposite case he proceeds with it.

PRESIDENT.—Why should not the phraseology of the Potgi Rules be adopted?

MR. SRINIVASIENGAR.—I am quite agreeable if only the indulgence is restricted to the family. I at first thought that the principle of heredity was being attempted to be carried too far in these amendments. I am however agreeable to the family of the last holder alone being shown this kind of consideration.

MR. RANGASWAMI IYENGAR.—My contention is that the last holder sometimes gets the office by mere chance, and that on his demise the entire family should be considered for the appointment before going to the stranger.

MR. SRINIVASIENGAR.—The Potgi Rules contemplated a condition of things existing at that time, but no longer in existence.

MR. RANGASWAMI IYENGAR.—My contention applies with greater force to the case of amalgamated villages. There would be only one vacancy and why should the other families lose the right?

PRESIDENT.—Now there is competition between two amendments; the only question is whether consideration should be shown to all or only to the family of the last holder. Hakdars' families are provided for in sub-clause (2). There may be a number of hakdars, one insane, another a minor, another illiterate and so forth. If, within three years the infirmities in each disappear, all will come forward to prosecute

their claims, as against the stranger. Mr. Narayana Rao will please say whether the heirs mentioned in sub-clause (3) are provided for in sub-clause (2).

MR. NARAYANA RAO.—Sub-clause (3) refers to all persons included in sub clause (2), provided they are not qualified under sub-clause (1). It includes al persons declared to be entitled to come in under sub-clause (2), provided they are not qualified under sub-clause (1). The sub-clauses are co-extensive

PRESIDENT.—The two sub-clauses (2) and (3) may be combined and one clause drafted. The difficulty can be got over by putting both the provisions in one sub-clause. All the possible heirs may be exhausted, the man who is a stranger brought in and given three years' time and then persons having claims to the office either on the ground of belonging to the family of the last holder or other families entitled to claim the right may succeed, if found qualified. That is Mr. Nagappa's amendment supported by Mr. Rangaswami Iyengar.

MR. RANGIENGAR.—If three years' time is given, it will conflict with Section 11. Before the expiry of three years, a man may file a suit whose claims had not been considered by the Deputy Commissioner. If a stanger is appointed for three years, a conflict will arise between the order of the Deputy Commissioner and the decree. The stranger, of course, will be the defendant in the case. Is it right that the decree should take effect after three years? Is it right that the operation of the decree should be postponed for three years?

MR. SRINIVASIENGAR.—Such a suit does not lie. The plaint is liable to be dismissed.

MR. RANGIENGAR.—Suppose his claims had not been considered by the Deputy Commissioner, and a stranger has been appointed for three years. Then that man whose claims had not been considered files a suit for possession.

MR. ANANDA RAO.—The sub-clauses (2) and (3) may be re-drafted and the re-drafting referred to a Sub-Committee consisting of myself, the Government Advocate and the Revenue Commissioner.

Mr. Rangaswami Iyengar excused himself in favor of Mr. Srinivasiengar.

The Council agreed to this arrangement.

CLAUSE 8, SUB-CLAUSE (4).

The Council considered the marginal note to be incorrect and were also doubtful of the interpretation of this sub-clause, and referred it to the Government Advocate.

MR. S. NARAYANA RAO.—It seems to me that, as the sub-section is at present worded, 'may' is equivalent to 'shall.' It has the force of 'shall,' because it does not give the Deputy Commissioner the option of not making any appointment whatever. It seems to me that no person who is an undivided member of the family of the person removed can be put in, as the clause now stands.

This sub-clause was also referred to the Sub-Committee for re-drafting in order to make the meaning of the legislature clear.

CLAUSE 8, SUB-CLAUSE (5).

MR. NAGAPPA.—I beg to propose an amendment. After the words "sub-section (1)," in this sub-clause, insert a comma and add the words "and if possible, acceptable to the family of the minor." The practice has always been to appoint a person who has commanded the confidence of the family.

It has been the rule to appoint a near relative as gumasta to discharge the duties of the office in cases where the registered holder of the office is a minor. Such a person is generally recommended by the members of the family of the minor. He is considered a trustee for the minor and as such must command the confidence of the minor's family. This principle is found in para 5 of Rule XLIII of the Mysore Land Revenue Rules. There is no reason to make a departure from this practice. Hence the necessity for this amendment.

PRESIDENT.—Does it find a place in the Madras Act? Could we not secure the object by an executive order?

MR. RANGASWAMI IYENGAR read the rule from the Proceedings of the Board of Revenue, Madras, and the SECRETARY read a similar rule from the Mysore Land Revenue Rules.

MR. NAGAPPA.—But. according to Section 2, all the old rules will be repealed.

PRESIDENT.—Why should it be brought in the body of the Act itself? We prescribe certain qualifications under sub-clause (1), and if a person satisfies those conditions, the Deputy Commissioner may appoint him. This is a matter entirely of a discretionary nature which it is not proper to provide for in the Regulation.

The SECRETARY having been directed to make a note that, in framing rules under Section 23, the old rule may be revived, MR. NAGAPPA withdrew his motion.

CLAUSE 8, SUB-CLAUSES (5) & (6).

MR. ANANDA RAO.—Although I am now speaking of sub-clause (5), my remarks will cover sub-clause (6) also.

Sir, in the amendments made to sub-clauses (5) and (6) of clause (8) of the bill, provision has been made by the Select Committee for maintenance being given from the emoluments of the village office to the minor baravarddar and to the sonless widow of the last holder respectively.

On mature consideration it will, I trust, appear to the Select Committee and to the Council generally that these amendments should be omitted.

The provision in question is opposed to the rules for the remuneration of patels and shanbhogs issued under Notification No. 219, dated 27th October, 1874, which, with the slight modifications made by Notification No. 2062, dated 31st August 1900, are still in force. Both notifications were issued with the sanction of the Government of India, and any alteration thereof would also require such sanction.

In these rules the remuneration of patels and shanbhogs is fixed on the scale prescribed for each and it is explicitly declared that "the sum payable to each officiator shall be his exclusive perquisite on which no other member of the family shall have any claim." These rules and the scales of remuneration therein prescribed are applied to a taluk directly the Survey Settlement is introduced into it. As the Survey Settlement has now been introduced into all the taluks, the rules in question apply throughout the State.

Looking into the history of these rules, and rules applicable to village offices generally in the State, one is struck with the absence of any good foundation for the provision in question.

The earliest order that has been turned up is the Commissioner's notification dated 9th September 1835. It is there only declared that while, as a general rule, village offices are to be considered hereditary and to be enjoyed by father and son in succession, the hereditary claimant is liable to be set aside if found unfit or unworthy from incapacity or bad character, the Superintendents of Divisions being in that case competent to appoint another person properly qualified in all respects, preference being given to a near relation of the last office-holder. There is no idea here of any female heir being recognized, much less of any maintenance allowance being paid to a minor or a female heir. The same notification also declared that all emoluments annexed by the sircar to shanbhogs and other village officers shall be considered as inseparable, inalienable from the offices to which they are annexed whether by mortgage, sale, gift or otherwise.

Circular No. 5 of 22nd October 1872, was issued embodying for ready reference the instructions issued from time to time regulating succession to hereditary village offices. In this, the inalienable character of the emoluments annexed to the office was again declared, and paras 5 and 6 went on to say—

"5. While the village offices are, as a general rule, to be considered hereditary, and to be enjoyed in succession in the male or female branch, it is to be understood that in any case wherein it may appear to the Superintendent that the hereditary claimant to the office is unfit, from old age, incurable disease, incapacity or bad character, it will rest with the Superintendent to appoint one of his direct and immediate male descendants, such as a son or grandson, and in their absence, undivided brother or their descendants, or daughter's sons before making the selec-

tion from divided brothers or cousins. If there is no such relative, a stranger may be nominated, the person appointed, whether he be a relative or stranger, being of course well qualified in all respects for the office.

"6. When the person lawfully entitled to succeed to the office is a minor, a near relative may be appointed as a gumasta in trust for him until he attains his majority."

Here there is no recognition of the widow or other female heir as eligible for succession to the office, much less entitled to maintenance from the emoluments annexed to the office. The minor is recognized and although, his interests are considered, no provision is made for his maintenance during minority.

It is in the Land Revenue Rule 43 of 1890 that we find provision made for the first time for maintenance being paid out of the official remuneration. Judging from its opening words, it appears to have been copied from the Standing Orders of the Madras Board of Revenue then extant, and judging from the rest of it, it appears to have been copied from the Chief Commissioner's Circular No. 5 of 1872 just mentioned. But neither in the Madras Standing Orders nor, as I have already pointed out, in the Mysore Circular 5 of 1872 is there any provision for maintenance of the minor or widow from official emoluments.

Such a provision made in the Land Revenue Rules of 1890 is possibly based on remarks made in Dewan's Proceedings passed on 28th October 1881 and on 8th May 1883 in two cases regarding succession to the office of shanbhog.

The Order of 1881 began by saying, "It is important that some definite principle should be followed in regard to the appointment of gumastas on behalf of minor shanbhogs." It proceeded to indicate how the minor's mother or other guardian should be consulted as they had naturally the right to nominate such qualified gumasta as they may consider to be in the interests of the minor. But their nominations as a rule fell on members of their own families rather than on those of their husbands or the collaterals who are the next heirs to the office. The order went on to point out how these latter had an interest in the office. It concluded with this sentence, *viz.*, "They (*i.e.*, members of the husband's family or the collaterals) have a preferable right to act as gumasta so long as they do not prejudice the interest of the minors subject to reasonable provision for the minor's maintenance." As to the particular case then before the Dewan, the order confirmed the appointment of the gumasta which had been made in accordance with these principles and directed that some reasonable allowance should be paid by the gumasta for the minor's maintenance.

By way of criticism it has to be observed that the order, though enunciating a principle in general terms, did not discriminate between a settled taluk and an unsettled taluk, and as a matter of fact the case in respect of which the order was passed had arisen in an unsettled taluk. The Potgi Rules of 1874 were entirely ignored, and the most charitable interpretation to place on the Dewan's order under notice is that is was applicable only to unsettled taluks generally without being meant to supersede the Potgi Rules in settled taluks. It is also permissible to argue that although the order contemplated the payment of a maintenance allowance by the gumasta, it did not say that this was to come out of the official emoluments, so that if payment was not made, the same should be excised from the official emoluments.

The Order of 1883 related to a widow's claim in a taluk into which the Survey Settlement had been introduced. It opened by stating that "the rule prohibiting the recognition of widows' claims to succeed to the shanbhogi office of their deceased husbands has not been generally enforced." And I take it that it is this laxity in enforcing what was admittedly the rule that has been the prolific cause of mischief and mismanagement in village affairs. In the particular instance before him, the Dewan observed that "the present shanbhog was an entire stranger to the family and as he had been but recently appointed, it will not be a hardship if he were called upon either to find a proper maintenance for the widow or to give up office altogether, in which case the widow was to be called upon to appoint a competent gumasta." The order is clearly erroneous. As a matter of fact, the widow in this case declined to receive maintenance from the man then holding office, and in the result a near relative of hers, nominated by her, was appointed to officiate for her.

In the course of a search among Chief Commissioner's Orders, an Order of 1878, was found and adduced as furnishing an argument in support of the maintenance clause. But this related to a patel's case which had arisen in the settled taluk of Shikarpur. That order cannot be construed as sanctioning the payment of any maintenance allowance out of official emoluments, because it bears more on the question whether a widow may be recognized as barawarddar and it rejected the widow's claim altogether, and the question of paying maintenance from the remuneration attached to the office did not directly arise, and no decision was passed on it.

Members of Council are aware how, on the introduction of the Survey Settlement into a taluk, the practice of patels and shanbhogs levying Aya and other perquisites on raiyats would discontinue, and these officials would be paid direct by the State. In May 1866, Col. Anderson, the Survey and Settlement Commissioner, proposed a set of rules for calculating the remuneration payable by the State and reiterating the terms of the Commissioner's Order of 1835, prohibiting alienation of the lands appertaining to the office. At para 7 of his letter No. 102, dated 1st May 1866, Col. Anderson said, "In some Collectorates of Bombay, it is the practice to forbid the officiator to share the salary fixed by scale with the other members of the family under penalty of dismissal. For obvious reasons, it must be desirable to do all we can to secure the sole enjoyment of the salary to the person who does the work. Though in practice it is found difficult to enforce this rule or to interfere with the private arrangements of the members of the official family, yet it is, I think, on the whole desirable to retain this rule. If this opinion is concurred in, an additional rule to this effect would require to be inserted." Thereupon the Commissioner of the day noted as follows on the 15th May 1866 :-

In the 7th para of Col. Anderson's letter, he recommends that the officiator should be forbidden to share his salary with his relatives. This had been a practice in the whole Province till the Circular No. 4361, dated 4th January last (1866), was issued disallowing the practice and prohibiting the Courts from admitting such claims."

And in accordance with this Note, the following rule was added to those which had been proposed by Col. Anderson :—

"The remuneration of the officiating patel or shanbhog shall be fixed on the scale for each, and the sum payable to each officiator shall be his exclusive perquisite on which no other members of the family shall have any claim."

Under all these circumstances, the practice of ordering payment of maintenance for the minor and the widow appears to have originated from orders passed subsequent to the Rendition, and when once the underlying principle of Potgi remuneration was lost sight of, the authorities departed further and further from the rule and took upon themselves to lay down the proportion to be paid in accordance with what they conceived to be the requirements of each individual case and the minimum wages on which an officiator could be secured to work, and to issue all manner of instructions as to how the payments should be made, whether direct from the Treasury or otherwise and what steps should be taken if the payments were not made. The remuneration allowed to village servants is not over-liberal, and it does not require much argument to show that the payment of any portion thereof to a widow or minor for maintenance is in violation of the explicit rules on the subject and the principle that the Potgi is paid for services rendered. Such a provision is opposed to public policy and is calculated to detract from the efficient discharge of the duties of the office and lead to the officiators oppressing the raiyats and resorting to other means for recouping what is deducted out of the remuneration fixed for the office. As already observed, it is at variance with the rules and practice in Madras and Bombay, where the conditions of village service are similar to those in Mysore. There is also an authoritative ruling of the Bombay High Court in Indian Law Reports, XVIII Bombay 752, that an agreement between a watandar and a deputy nominated by him for the payment by the latter to the former in consideration of procuring such nomination, of a sum of money out of the cash allowance received by the deputy as remuneration assigned to his office is not legal, being contrary to the spirit of section 7 read with section 23 of the Bombay Hereditary Officers Act III of 1874, which sections are similar to the Potgi Rules, declaring the remuneration of an officiator to be his exclusive perquisite and to be inalienable. In Mysore, the chances are that a suit for a share in the emoluments of office secured by any agreement with the officiator

would be dismissed on the ground that such a contract was opposed to public policy. For these reasons, the amendments suggested by the Select Committee, *viz.*, the addition of the words, "It shall be competent to the Deputy Commissioner or Assistant Commissioner to assign to such successor during his minority an allowance not exceeding one-half of the emoluments attached to the office" in sub-clause (5) of clause 8 and the new sub-clause (6) of clause 8, should be disallowed.

MR. S. NARAYANA RAO.—I second this proposition. My reason for so doing is that the emoluments attached to these offices are so very small that, if shared between the officiator and the minor or the widow, the officiator will get very little and will not have sufficient inducement to do his work honestly and in a manner calculated to promote the good of the country. The emoluments should be given entirely to the officiator. There may occur cases in which it will be a hardship, but the interests of public service require that such hardship should not be taken into consideration.

MR. RANGIENGAR.—I beg to oppose the motion made by Mr. T. Ananda Rao, and seconded by Mr. S. Narayana Rao. It is no doubt very important to consider the efficiency of the public service, and in the interests of such efficiency, it is desirable that Government should secure the services of a man who will feel satisfied with the emoluments given to him. But at the same time, the object of this bill is to safeguard the interests of hereditary village servants. The fact that these appointments are made hereditary shows that Government expects that notwithstanding the small remuneration that is given to the village servants, persons will be willing to serve in the expectation that the office would be continued in their family on account of its hereditary nature, and we find people willing to serve and receive a remuneration which does not exceed the pay that is given to menial servants. It is this hope which induces people to remain in village offices and continue to serve Government. But if the servants know that, when they die sonless and the office passes out of the family, their widows would be left unprovided for and no portion of the emoluments would be given to them during their lifetime, I submit that it will take away from the attraction which village service has for them. Side by side with efficiency of public service, we have to take into account the impression which a rule of this kind would have upon the people. After all, it is only for a comparatively short time that this small allowance is made in favor of the minor son or widow. We expect the minor to become qualified soon and take office. If, during his minority, we do not see that he is enabled to receive some kind of education and thus qualify himself for the office which he is to fill after attaining majority, it will be very hard upon him. Similarly, in the case of the widow who is left destitute after the death of her husband who served the State faithfully. It is only in such cases that provision is required to be made. It is nothing but fair that, during her lifetime, she should receive a portion of the emoluments.

One of the reasons stated by Mr. Ananda Rao as to why the amendment made by the Select Committee ought not to stand is that such a departure from the rules would require the sanction of the Government of India. I submit that, as the bill is framed, it is calculated to invade several old rules and standing orders passed before the Rendition. Anyhow, the provisions of this bill are such that, in any view of the case, it is necessary to obtain the sanction of the Government of India. This particular reason need not therefore weigh with the Council in considering the desirability or propriety of granting a small concession that the Select Committee has recommended.

MR. NAGAPPA.—I beg to oppose the amendment, and in doing so, I endorse the opinion of Mr. Rangiengar. The objections raised by the First Councillor to the provisions made by the Select Committee in favor of minors and widows are threefold—firstly, that they disregard the Potgi Rules and as such will require the sanction of the Government of India; secondly, that some of the executive orders passed allowing maintenance were so passed in utter ignorance of those rules; and thirdly, that the efficiency of the public service will suffer by adopting the amendments. None of these objections is valid. As to the Potgi Rules, all existing rules and enactments will be repealed after the passing of this bill. Under the Instrument of Transfer, the bill has to receive the sanction of the Government of India. As several innovations have been adopted in this measure, there is no reason why these provisions about maintenance should not be introduced. When those innovations are

considered by the Government of India, these will also be considered. There is therefore no force in the first argument.

As to the second, I beg to say that the executive orders were not passed in utter ignorance of the Potgi Rules. The proceedings of the Government in such cases would show that the Government had deliberately departed from the Potgi Rules and accorded special treatment in the cases of minors and destitute sonless widows in deference to the opinion of several experienced Revenue officers. In this connection, I beg to be permitted to quote the opinion of the learned mover himself on this very draft when he was Revenue Commissioner:

"I take it that under Section 6 of the Draft Regulation, the practice of registering widows as "Baravarddars" in the place of holders deceased divided in interest from the other members of the family, will cease. I consider this to be too great an innovation in present conditions of Hindu society, and I would allow the widow to be registered, and given a maintenance allowance to be fixed by the Deputy Commissioner at a rate not exceeding one-third of the 'Potgi" and payable direct from the treasury during her life-time. An officiator can be appointed by the Deputy Commissioner himself to hold office during good behaviour and efficient performance of duties, and not during the good-will of the registered "Baravarddar." The officiator will be entitled to the remaining two-thirds of the "Potgi." It may be provided that the selection of the officiator shall be made as far as possible or convenient as indicated in Section 6 (3)." (*Vide* Para 13, page 27 of the Papers relating to the Draft Village Offices Regulation.)

It is very strange that the learned mover, who held such strong views upon this question both as Revenue Commissioner and as a member of the Select Committee which recommended these provisions, should have suddenly changed his mind and thought fit to bring forward this amendment.

As regards the third point that the efficiency of the public service will suffer, both the mover and the seconder have stated that the emoluments are so very small that, if divided, it will benefit neither the widow nor the minor. If the emolument is so small, I ask, how will it affect if one-third is given to them? It is very desirable that we should provide for the maintenance of the minor, for his education and also for the widow in certain cases. In the amendment suggested by the Select Committtte, discretion is given to the Deputy Commissioner. Such being the case, I beg that the Council will pass the recommendations of the Select Committee and reject this amendment.

MR. SYED AMIR HASSAN.—The practice of giving a small allowance is still in existence in almost all places and I have not observed any difficulty in the operation of this practice.

MR. C. SRINIVASIENGAR.—The question raised is an extremely important one and its literature has been traced from the commencement by Mr. Ananda Rao. The trend of authorities is against the grant of any allowance to any member of the family who is not actually performing the duties of the office in question. There have been conflicting orders passed from time to time according to the circumstances of each particular case. As Mr. Nagappa has quoted the opinion of Mr. Ananda Rao himself in favor of it, so he might also quote my own opinion, recorded somewhere, that the grant of a maintenance allowance was not opposed to law and that humane considerations required that the practice should be continued in exceptional cases. I believe, if we had only sentimental grounds before us and were not making an enactment on the subject, we could easily take into consideration the circumstances of destitute widows and helpless children, and so on. But now we are legislating on the subject of village offices; we are laying down in a formal and legal manner what village offices are, who should hold them, what their qualifications should be and how they are to be remunerated. We are dealing with matters connected with the efficient administration of villages. That being so, the question is how efficiency of administration could be promoted, and the question whether a portion of the emoluments should be taken away from the performer of the office and given to somebody else is quite outside the scope of the Regulation. It has to deal only with the law relating to the administration of village offices, and it is a question whether any court would recognize any agreement entered into between the parties themselves regarding the sharing of the emoluments attached to village offices. The question is whether we are to take away a portion

of the emoluments from one to whom it ought to be given and give it to somebody else and how it is to be enforced. Are we to deduct it from the fixed emoluments and give it to another? If so, how can we enforce the strict performance of the duties in question? It is not always a cash payment. There may be lands. How are we to find out how much land is properly cultivated, whether the revenue is properly estimated, and how are we to get at that revenue and how is the apportionment to be made?

Then again, Mr. Rangiengar said that this was only an arrangement for a short time. A man may die leaving a young widow who may live for a considerable time, and in such a case, Government will have, as one of its duties, the duty of deducting the potgi due to the performer of the office and of paying it to the widow. I think that is a function which does not legitimately appertain to Government. Whether the emolument is land or assignment of revenue, or cash, the underlying principle is that the person that renders the service to Government is entitled to get the whole of the emolument. I understand that Government are quite prepared to concede that the wishes of the persons interested in the minor should be consulted in the appointment of the officiator. That being so, we are showing all possible concession to the minor. How we can help the unfortunate widow, it is difficult for me to say. But whatever it may be, legally there can be no sharing of the emoluments. Accordingly, I am of opinion that these provisions inserted by the Select Committee should be expunged.

There are two places where payment has been provided for, one as regards the minor and the other as regards the widow. The minor is to have a share of the emoluments in the case of all village offices, while the widow of only a patel and shanbhog is to have such a share; why this distinction has been made, I have not been able to understand.

MR. V. N. NARASIMMIENGAR.—Three reasons have been assigned to this amendment. The first is a political reason. The sanction of the Imperial Government will be required for this law, and will cover also the changes in previous rules, regulations, etc. The second is that the remuneration is small. I beg to say that the remuneration is not an irreducible minimum in every case. No doubt in some cases the remuneration of the patel or other village officer is very little, and in others it is just enough to keep body and soul together. But if a family can live on the emoluments by sharing it, I do not think we ought to object. A provision like this is very consistent with the principle underlying the whole of this legislation. This is not a cut and dry sort of measure. We do not pay the people for their work and dismiss them as soon as the work is over. We take into consideration many other things, humanitarian views, for instance, and I am of opinion that this provision ought to remain. The third reason suggested is that it will interfere with the efficiency of the public service. Hitherto the practice has been very largely resorted to and so far as I know—and I think I have had, one thing with another, a sufficiently long revenue experience—not only the patel and shanbhog, but even nirganti, toti and talari minors, have had allowances, and still no complaints have come, and I think this reason ought not to cause any apprehension in the passing of the Select Committee's amendment. The patels and shanbhogs alone are mentioned in sub-clause (6), as I believe they loom large in the eyes of the legislators. Why the others have been omitted I am unable to say. I propose they also should be included.

MR. T. ANANDA RAO.—Sir, before the question is put to the vote, I wish to say a few words with reference to what has fallen from Mr. Nagappa in opposition to the amendment which I have proposed. I must confess that I had no idea that my consistency mattered at all or mattered much before the requirements of the public good. It is true, as quoted by Mr. Nagappa, that some years ago as Revenue Commissioner criticising the bill which had been circulated for opinion, I suggested provision being made out of official emoluments for the maintenance of the widow and the minor heir. But that idea was not adopted in the draft of the bill which the present Government found before them. It is true also that I joined the Select Committee in their proposal to insert these provisions in the bill. The fact is that my own opinion (and I believe the case was the same with the rest of the Select Committee) was formed upon a perusal of the proceedings of the Dewan as they are given in the editions of the Revenue Manual issued from time to time,

that is to say, in the shape of bare orders or decisions without preamble and without a statement of the circumstances of the locality or the case concerned. But, on my attention being drawn by high authority to the evil of those proposals, it was my duty to examine the subject *de novo*. This I did, and I found good cause to change my opinion in the matter. Upon a close examination of the facts and features of the cases in which the several orders were issued, I was convinced that the proposals were not conducive to the interests of the village service. This conviction was reached only recently, and I have felt it my duty to give effect to my convictions. Otherwise, I should belong to that class of persons of whom the late Mr. C. Rangacharlu used to say: "They had never a doubt, and they never changed their mind." My personal consistency or inconsistency is of no consequence in this matter in which Council should form their opinion entirely with a regard to the public interests involved, to the requirements of the efficiency in the village service. I beg that Council may judge of the question entirely on its merits apart from my individuality.

More important than my inconsistency is the point on which Mr. Nagappa laid stress, *viz.*, that the hereditary character of the village office would be impaired if the Select Committee's proposals in question were dropped. With regard to this, I have only to point out that the hereditary character of the office is amply provided for when it is declared that the office shall vest in a qualified member of the family and that it is not, unless no such member is forthcoming in the whole family in all its branches and ramifications, that a stranger should be appointed. If the payment of a maintenance allowance from the official salary to the widow or the minor is an essential feature of heredity, it would be only proper to make a similar payment to all the widows and minors who would, under the ordinary provisions of the law of inheritance, be entitled to succeed to the estate of the last holder of the office, instead of only to the nearest of them as proposed by the Select Committee. This of course is out of the question. In these circumstances, I submit, the minor and the widow must, like the other members of the family, be left to depend on the family estate generally, irrespective of the emoluments of office which the Select Committee have declared in clause 5 of the bill shall not be liable to be transferred, partitioned or encumbered in any manner whatsoever. Any deduction in the salary of the office payable to the officiator should only impair the efficiency of the officiator and lead to corruption and peculation such as cannot fail to have an unhealthy influence on the village service generally.

For these reasons, I would ask the Council to agree to the motion that the provisions in question be omitted.

MR. C. SRINIVASIENGAR.—There is another provision in the bill which authorizes the amalgamation and grouping of villages. It is done in the interests of public service. In place of two or three who have been performing the duties of their respective offices and enjoying the remuneration attached, one man is appointed. The other two are not allowed to partake in the emoluments. The idea is that the man who performs the duty must get the emolument. It is really hard that the other two should be told to go home, deprived of what they had been enjoying from time immemorial. There is no disqualification on their part, no fault of theirs, yet the measure is deemed necessary and is ordered, and the result is they lose their potgi. How is their case different from that of minors and widows?

MR. NAGAPPA.—A word of reply is necessary. This amalgamation was one of those drastic measures which Government had recourse to but very seldom, and there were only two instances in the last thirty years or so. In 1877 the abolition of Sircar Shanbhogs was ordered, and in 1879 Magni Shanbhogs were abolished. These were drastic measures.

MR. C. SRINIVASIENGAR.—I do not refer to those measures. The procedure I have alluded to is one of common occurrence.

MR. S. NARAYANA RAO.—In the interests of public service, amalgamation of villages is effected with a view to regulate the remuneration to be given to these officers, so as to make them do their duty honestly. If these considerations induce us to make such alterations as amalgamation of villages and so forth, I do not see why the officiator should not get the whole of the emoluments for the very same considerations. The whole principle is the efficiency of the public service, and if we have an eye to that, every other consideration must give way to it.

PRESIDENT.—Before I put this proposition to the Council, I should like to make a few observations regarding the amendment proposed by the First Councillor and also regarding the remarks that have been made by Hon'ble Members of this Council. I think that, as observed by Mr. Srinivasiengar, those Hon'ble Members who are opposed to the amendment have lost sight of the fact that we are now legislating in regard to village offices and the remuneration attached to such offices. In legislation of this kind, I do not think that any considerations regarding the provision to be made for the families of the village officers or for their minor sons are in place. We are not now making any provision for Provident Funds or legislating on humanitarian lines. What we are concerned with is how best to promote the efficiency of the village officers. There is no provision in any legislation, either in Madras or Bombay, where the conditions are the same as in Mysore, for diverting a portion of the salary of the officiator for the maintenance of the widow or the minor son. It was only on two occasions that legislation has been attempted on this question. During the days of the British Commission, we had no Legislative Council, but orders issued under notifications of the Government of India had the effect of a legal enactment as far as the State was concerned. One of such notifications was what are called the Potgi Rules of 1874. These rules have deliberately declared that the remuneration attached to the offices of patel and shanbhog shall be the sole perquisite of the officiator and no other member of the family shall have a claim upon it, thus affirming a general principle that whenever a salary is attached to an office, the man who officiates should get it and no other member should share it with him. If you will note the term "Potgi" itself, it literally means "remuneration" or "salary" for the maintenance of the officiator, which is fixed on a scale sufficient to remunerate him for service rendered. It is not intended for the benefit of the joint family or the hakdar's family whether of shanbhog, patel or other class of officers. It is not a provision made for a hereditary office. If you will remember how potgi is settled, you will see that it is intended entirely as remuneration for the discharge of the functions attached to the hereditary office and is not intended for the support of the family or the maintenance of the son or the widow. In old times, lands had been granted for village service. In some places there were also cash payments. There were also grain payments made by the villagers. At the time of the Survey Settlement, Government found that these irregular payments and the system of remunerating by assignment of lands were attended with abuses, and they also felt the necessity of bringing all these different modes of remuneration into one form, and deciding what the salary should be for each of the different village offices. When the scale had been fixed, they took into consideration the emoluments resulting from the land and from cash payment and when the former exceeded the amount required for salary, half such excess was put on as additional jodi and the land left in the possession of the hakdars. When fixing potgi, the two expressions "salary" and "officiator" came into use for the first time, that is "salary" attached to the office, and "officiator" who was distinguished from the man having the *hak* or the hereditary right to the office, although the *hakdar* may also be the officiator. The scale of salary having been once fixed, it should be treated as any other salary is treated. If Hon'ble Members suggest that a provision should be made in virtue of the office being made a hereditary one for the maintenance of the widow or the minor son from the potgi assigned to the officiator, on the same analogy we may ask Government to legislate for some provision being made for the families of Government officers out of the salaries assigned to them. I do not lay much stress on the fact of the departure proposed being in violation of a notification of the Government of India which has the force of law, because as observed by some of the members, we are legislating again now and it is open to us to reconsider all the laws that have been previously passed, and make a fresh start. But as far as the principle is concerned—I am now referring to the different orders passed from time to time by Government allowing these maintenances to the widow and the minor son from the potgi—it is precisely this departure from the spirit of the Potgi Rules that was commented on by the First Councillor in moving the amendment. This departure has somehow been made and persisted in, and it behoves us now when we are again legislating to see how to remove all the irregularities that have crept in in recent years.

I have nothing further to say, and I would now ask the members, if there are no further remarks to be made to divide on this question, as there is difference of opinion on the amendment before the Council.

One other remark I would make is that there is generally a private understanding between the officiator and the hakdar in many places under which the former in consideration of his being allowed to officiate as gumasta, gives a certain portion of the remuneration to the hakdar; and I believe this practice is to some extent prevalent in Bombay also. But it is one thing to know that such a practice exists and another to give legal recognition to it. Provision of the kind made by the Select Committee is quite outside the scope of the present Regulation and we should be landed on all manner of difficulties when we once attempt to regulate the distribution of the potgi. The Bombay High Court's opinion on an analogous question that arose in Bombay should be decisive as regards the subject now under discussion. It is also worthy of notice that the hereditary principle is more fully and consistently recognized and given effect to in Bombay. The distinction attempted to be set up between officiator and gumasta or deputy has no warrant either in the Potgi Rules or the Bombay practice.

Mr. Ananda Rao's amendments were put to the Council and were carried by a majority of six to four, one not voting.

The Council adjourned to the next day (27-2-08).

THURSDAY, 27TH FEBRUARY 1908.

The Council met at 3 P.M.

PRESENT.—All except MR. KANTHARAJ URS.

CLAUSE 8, SUB-CLAUSES (2), (3) AND (4).

MR. C. SRINIVASIENGAR.—I beg to move that sub-clauses (2), (3) and 4 of clause 8 be redrafted as follows:—

For sub-clause (2) and (3) of clause 8, substitute the following:—

"(2) Subject to the provisions of sub-section (1) and save as hereinafter separately provided in the case of minors and subject also to any declaration made by the Deputy Commissioner under Section 7, the succession to the office of patel, shanbhog, nirganti, toti or talari of an unalienated village, when such office is permanently vacant, shall devolve upon a single person who shall be (*a*) one of the immediate legal heirs of the last holder of the office in the order of seniority, (*b*) failing such heirs, one of the members of the remoter branches of the family in the order of the seniority both of such members and of such branches, and (*c*) failing these also, one of the duly recognized hakdars in the order of their importance as determined under rules made by Government under Section 23, or one of his heirs according to the order of precedence laid down in (*a*) and (*b*) above. In the absence of persons entitled as above under (*a*), (*b*) and (*c*), the Deputy Commissioner, or Assistant Commissioner may appoint any other person duly qualified under sub-section (1), subject to such appointment, unless sooner determined by a decree in a suit hereinafter provided for, being cancelled in favor of a person falling under (*a*), (*b*), or (*c*), in the event of such person being forthcoming at the end of three years from the date of the appointment."

Succession and appointment to permanent vacancy.

For sub-clause (4) of clause 8, substitute the following:—

"(3) A vacancy caused by the dismissal or removal without a declaration by the Deputy Commissioner under Section 7, of the holder of the office of patel, shanbhog, nirganti, toti or talari of an unalienated village or by the suspension of such holder, shall be deemed a temporary vacancy until the death of such holder, or the termination of his suspension, as the case may be; and the Deputy Commissioner or Assistant Commissioner shall fill up such temporary vacancy in accordance, as far as possible, with the provisions of sub-section (2). In doing so, it shall be competent to the Deputy Commissioner or Assistant Commissioner, if he considers desirable, to supersede the undivided members of the family of the dismissed, removed or suspended holder."

Filling up temporary vacancy.

The present sub-clause (5) becomes sub-clause (4) and the only modifications required in it are :—

In the third line, after the word "office" add "in accordance with the principles laid down in sub-section (2)" and in the last line omit the words "and 3."

In sub-clause (2) of clause 11, after the words "eligible for appointment" add "or in the case of a minor for registration as successor."

MR. RANGIENGAR.—Supposing the son of the senior uncle is younger than the son of the junior uncle, what will be the effect of the expression "in the order of seniority?"

MR. SRINIVASIENGAR.—First of all the competition is between the members of the senior branch and then come the members of the junior branch.

MR. RANGIENGAR.—The difficulty is when the men are all of the same rank and they share equally. Then the question of primogeniture in a way comes in, though it is not so called; but, of course, the meaning is clear. I think the amendment is otherwise unobjectionable.

MR. RANGASWAMI IYENGAR.—Would "legal heir" mean, heir according to the law of succession to which he is subject? In the expression 'in the order of seniority,' what does seniority mean, seniority in age or seniority in rank?

MR. SRINIVASIENGAR.—My answer to the first question is "yes." As to the second, the competition is first between branches and then between the members of each branch.

MR. RANGASWAMI IYENGAR.—Where do grandsons come?

MR. RANGIENGAR.—When the grandsons are considered they come under heirs more remote. First of all, account is taken of immediate heirs and when we don't find anybody in that group, we go to persons more remote.

MR. RANGASWAMI IYENGAR.—'Remote' seems to refer to collateral branches. In the case of grandsons, I should say they are all coparceners. The use of the word 'seniority' leads to doubt. Let us suppose A dies leaving sons B, C and D. B is dead leaving two sons. Now according to this rule, who will be entitled to succeed?

MR. NARAYANA RAO.—May I know what the existing practice is?

MR. RANGASWAMI IYENGAR.—The grandson by the eldest son (deceased), succeeds in preference to the sons.

MR. SRINIVASIENGAR.—Mr. Rangaswami Iyengar's doubt is now partly mine also. The competition is between a grandson and his uncle. As the section is now drafted, the son will get the office in preference to the grandson.

PRESIDENT.—If the family is undivided, would the hak go to the son or the grandson? The law on the point may be made clear by indicating the rule of primogeniture in the draft itself. In selecting the person, the Madras Government is guided by the principle of primogeniture. The office being a hakdari one, why may not the expression used in the Madras Act be adopted?

MR. SRINIVASIENGAR.—The expression "seniority of descent" may perhaps be adopted.

MR. NAGAPPA.—I read the following two illustrations from the "Standing Orders of the Madras Board of Revenue"—Chapter XIII, page 456 :—

"(1) The last permanent holder of a village office leaves behind him two sons A and B, of whom A is the elder, and two grandsons by A, *i.e.*, C and D. A, the eldest son, will succeed his father.

"(2) If, however, A is dead or disqualified, the eldest of the remaining three heirs, B, C and D, succeeds in accordance with the rule that when an estate descends to a single heir, the presumption is that it will be held by the eldest member of the class of persons, who would hold it jointly if the estate were partible."

This is the interpretation given in the Madras Board's proceedings. But this is not the practice here. Before adopting any amendment, let us be definite as to the principle to be followed in such cases. Where A, the permanent holder of a village office had three sons, B, C and D, and B is dead leaving behind a son E, then the question is whether E or C should succeed on the death of A.

MR. NARAYANA RAO.—According to the wording of sub-clause (2) as in the amended bill "succession shall be regulated by the ordinary provisions of the law applicable to the last holder." According to the ordinary provisions of the Hindu Law, all the sons would share in the property equally and the deceased son would be represented at the division by his issue. This is the ordinary law. There is an exception to this ordinary law in the Hindu Law. The law of primogeniture is known to the Hindu Law as in succession to impartible estates, etc. Let us take the case of a holder dying, leaving a grandson by a predeceased eldest son and grandsons by a predeceased second son and a third son. If we apply the ordinary Hindu Law, the third son alone would succeed to the exclusion of the grandson by the first son and the grandsons by the second. But if we bring in the law of primogeniture, then the eldest son's son would succeed to the exclusion of the descendants of the second son and the third son. This is provided for in the amended bill. Now, the draft of Mr. Srinivasiengar also proceeds on the same lines. But the difficulty arises on account of the expression "in the order of seniority."

MR. RANGASWAMI IYENGAR.—Then why should we not have the same words as in the original sub-clause (2) itself? It may be tested by concrete instances, whether it does not cover all cases and satisfy all conditions. I would propose that sub-clause (3) of the amended bill be omitted, the present sub-clause (4) numbered as sub-clause (3) and the words "subject to the provisions of sub-sections (1) and (3) and save as hereinafter separately provided in the case of minors and subject also to any declaration made by the Deputy Commissioner under Section 7" be inserted in the beginning of sub-clause (2). We need not make a distinction between permanent and temporary vacancies.

MR. NARAYANA RAO.—According to this, the son of a deceased son will not always succeed. If a Mahomedan who is not subject to Hindu Law be the holder of the office and a question arises on his death as to who should succeed, the surviving grandson of a predeceased eldest son or one of two other sons, then according to the Mahomedan Law applicable to the last holder, the immediate heirs will be the sons, and the grandson by the predeceased son will be excluded by the eldest of the surviving sons. In these circumstances, there will be a conflict between the two systems of Law, Hindu and Mahomedan. If the policy of Government be to give the office to the grandson by the eldest son to the exclusion of the other sons, he will not get it under the Mahomedan Law, when the last holder is a Mahomedan.

MR. RANGASWAMI IYENGAR.—There has not been any appointment in practice among Mahomedans. But the principle is that the law applicable to the last holder will be applied. The competition is between legal heirs.

PRESIDENT.—According to the Hindu law, we propose to recognize the grandson by the eldest son in preference to the second son.

The next question is whether we shall introduce the expression "subject to sub-section (3)" as proposed by Mr. Rangaswami Iyengar and differentiate between permanent and temporary vacancies.

MR. RANGASWAMI IYENGAR.—The addition of the words "subject to sub-section (3)" is to show that in some cases, the devolution will be somewhat different.

MR. SRINIVASIENGAR.—If I understand Mr. Rangaswami Iyengar aright, he wants sub-clause (3) to be referred to in sub-clause (2), and the word "permanent" removed. I don't know if there is any object to be gained by the omission of the one or the insertion of the other.

MR. NARAYANA RAO.—Though there is a general rule of interpretation that a general provision is controlled by a special one, yet for sake of clearness, such qualifications are repeated in several instances; and as there is some clearness to be gained, sub-clause (3) may be referred to in sub-clause (2).

PRESIDENT.—For sub-clauses (2) and (3), the following will be substituted.

Succession and appointment to permanent vacancy.

"Subject to the provisions of sub-section (1) and save as hereinafter separately provided in the case of minors and subject also to any declaration made by the Deputy Commissioner under Section 7, the succession in the case of a permanent vacancy (*a*) shall be regulated by the ordinary provisions of the law applicable to the last holder, provided that it shall devolve on a single heir and that, where there are more persons than one who would, under the ordinary provisions

of the said law, be entitled to succeed to the last holder of the office, preference shall be given to the eldest member of the eldest branch among those persons, and (*b*) failing these, shall devolve on one of the duly recognised hakdars in the order of their importance as determined under rules made by Government under section 23, or one of his heirs according to the order of precedence laid down above. In the absence of persons entitled as above under (*a*) and (*b*), the Deputy Commissioner, or Assistant Commissioner, may appoint any other person duly qualified under sub-section (1) subject to such appointment, unless sooner determined by a decree in a suit hereinafter provided for, being cancelled in favour of a person falling under (*a*) or (*b*), in the event of such person being forthcoming at the end of three years from the date of the appointment."

This was agreed to by the Council.

Sub-clause (4) was next considered and it was resolved to insert the word "removal" after "dismissal" in the second line and the words "if he thinks proper" after "may" in the sixth line, to substitute "such holder" for "the dismissed or suspended officer" in the eleventh and twelfth lines, and to omit the words "and (3)" in the fourteenth line and in the proviso, of sub-clause (4) of the bill, as amended by the Select Committee.

PRESIDENT.—Before finishing with clause 8, we have to consider certain other amendment of which notice has been given.

MR. B. NAGAPPA.—I beg to move that the following be added as a new sub-clause to clause 8:—

Notice of adoption when heir is adopted.

"In any case in which any holder of the office or his widow shall adopt an heir, a notice of such adoption shall within three months thereof be made to the Deputy Commissioner, by such holder or his widow or in case of their death, by such adopted heir or by the guardian of the latter and the Deputy Commissioner shall register the name of such heir accordingly."

"But if such adoption shall subsequently be set aside by decree of a competent Civil Court, the Deputy Commissioner shall remove such name from the register at the instance of the person aggrieved."

Amendments regarding the insertion of new clauses in the cases of adoption by the holder of the village office or by his widow are necessary to put an end to false cases of adoption. Cases are not wanting to show the tendency of late to set up the claims of an adopted son, where a rich issueless person dies without making any will. The law of adoption among Hindus does not require the factum of adoption to be evidenced in writing nor does it require registration. Hence it is easy for unscrupulous persons to set up false cases. It is undesirable that revenue authorities should decide cases of adoption. I therefore propose that Revenue Courts should not recognize such adoption unless notice of it is given within three months of such adoption or a decree obtained by a Civil Court as provided in the amendments.

I beg to invite the attention of this Council to the provision to the same effect made in the Bombay Act. The Bombay Government have wisely provided that if an adoption takes place, it should be reported within three months. So there will be some record of the fact in the Collector's Office, and it will facilitate the selection to the office when a vacancy occurs. If the adoption is reported, the revenue authorities will recognise such adoption; otherwise, they will have to refer the person to the Civil Court to establish his right. It is a desirable provision and I see no reason why we should not with advantage borrow the same. Hence this amendment.

MR. RANGIENGAR.—I beg to second this amendment. I beg to submit that as the law at present stands, a written authority to adopt given to a widow by her husband requires registration, but not an oral authority. The law does not declare that the authority to adopt should be in writing. Questions of adoption very often crop up in Civil Courts and very great inconvenience is experienced by the courts and the public on account of the uncertainty attending the proof of adoption. Village service is a matter in which the Government is interested and it cannot afford to allow the parties to litigate for any length of time or concern itself in holding an enquiry as to the truth or otherwise of the adoption. In the interests of public

service it is desirable that whenever an adoption is made, notice should be required to be given to the Deputy Commissioner of the fact of the adoption within a certain time after it is made, so that it may serve as a piece of evidence in future when the adoption is disputed by anybody and also prevent the parties from setting up a false adoption. If the Registration Act had required that the authority to adopt and the adoption should be registered, this provision would have been unnecessary, but as it does not do so, it is desirable that a provision of this kind should be made.

MR. A. RANGASWAMI IYENGAR.—I think we cannot follow the provisions of the Bombay Vatandars Act in all these respects. These provisions were made for a special purpose in that Act. Under it, all the vatandars are registered, and the Collector keeps the register. Here in our Province, as regards village officers, we do not keep a register of the heirs of the village officers. The adopted son is only one of such heirs; there may be grandsons and great grandsons, remote heirs according to clause 8, and heirs of all sorts according to Hindu and Mahomedan Law, and unless there is a provision for registering all the heirs, no object will be gained by registering the name of the adopted son alone. So I would appeal to the mover and the seconder of the amendment to withdraw it. The Vatandars Act of Bombay is a peculiar one and the provision therein made is made for a special purpose as the hakdars there have the right to nominate officiators and the Collector has to keep a register of hakdars and vatandars.

MR. RANGIENGAR.—What has led Mr. Rangaswami Iyengar to suppose that a register of the *hakdars* is kept in Bombay is the wording of clause 24. The words used are "Representative Vatandars." Perhaps he understood them to mean "Representative of the Vatandar." But the representative vatandar is a person who performs his duties by deputy. So a register of officiators is kept, as we have in our country. It cannot be said, that patels and shanbhogs in this Province are not entered in the register of village servants. Their names are entered. In Bombay too, the Vatandars Act does not provide that the heirs should be registered, or that there should be a register of the heirs of the vatandar. The mere fact that that Act deals with vatandars and ours with village officers does not stand in the way of our introducing the amendment.

MR. S. NARAYANA RAO.—I wish to know whether the mover of this amendment intends that the adoption by only the holder of the office should be registered, or the adoption by any member of his family. If the provision applies to the holder alone, then it will not serve any purpose, because the holder may die without making any adoption and the next heir may be a person who claims to be the adopted son of the cousin of the late holder. So no object will be gained unless we make it a rule that an adoption by any member of the family, however remote, should be registered.

PRESIDENT.—I do not think the conditions here and in Bombay are the same. It is difficult to argue by analogy. The provision in the Bombay Act refers to a different state of things altogether. I think our case will be strengthened if we have a precedent in Madras, as it would apply to the state of things in Mysore better than any provision drawn from the Vatandars Act and the Vatandari system in Bombay.

MR. NAGAPPA.—The object is that the Revenue Courts may not be flooded with these cases.

MR. C. SRINIVASIENGAR.—I do not know if there is any such difficulty as regards adoption. Why should the Revenue authorities keep the vacancy open and ask the parties to go to a Civil Court for the mere reason that a notice was not given at the time? Are we to tell the party your adoption was not duly notified to Government by the deceased of his widow; therefore you had better go to a Civil Court and obtain a decree? Is the appointment to be kept open till then? We have a complete machinery on the Revenue side and the Revenue Officers are competent to go into the matter.

MR. NAGAPPA.—Then there will be two tribunals to adjudicate on this question, one the Revenue Court and the other the Civil Court. This may lead to a conflict between the two.

MR. C. SRINIVASIENGAR.—According to the amendment, when there is a controversy as to the heirship, the matter will be taken out of the jurisdiction of the

Revenue authorities who must abide by the decision of the Civil Court. We have to go back and cancel our arrangements. There is to be no finality about them and we have to be guided by the judgment of the Civil Court whether before, at or after the time when the arrangement is made.

MR. NAGAPPA.—If not, we shall not be respecting the judgment of the highest court.

PRESIDENT.—The main object of our creating village offices is to secure efficiency of public service, and in so securing efficiency, if we can respect the principle of hereditary succession, so much the better. We shall endeavour, as far as possible, to combine the two principles. But to give prominence to the principle of hereditary succession and postpone making arrangements for the efficient discharge of village offices, pending the decision of the question of succession by the Civil Court, would be certainly undesirable. I do not think this has been done before, nor is it the principle that has been followed in dealing with appointments of village officers. If I understand the principle of making these appointments aright, we do not put off making permanent arrangements pending adoption of an heir by the widow or the last holder or any adjudication by a Civil Court. With all the materials available at the time, we make the selection that we consider the best under the circumstances for the efficient discharge of the village office, and in making such arrangements, we keep this principle of hereditary succession in view, so that this comes in only in subordination to the other principle. But under the Vatandars Act the condition of things is quite different. They legislate for keeping alive the *haks* and rights of these hereditary offices, and adopt an elaborate procedure for registering all those entitled to claim office, so that they may be consulted when the appointment is made. We have undertaken no such obligation here in Mysore. We cannot disturb the arrangements made, because a decree has been produced long after the appointment has been made by the Revenue authorities. Not that we do not give every consideration to a decision of the Civil Court; appointments made are sometimes revised in the light of those decisions; I am only declaring the existing practice. We place the efficiency of public service foremost, and in securing it, if we can recognize the principle of hereditary succession also, we do so to the best of our ability.

As the amendment has been moved and seconded, I will put it to the Council.

The amendment was put to the Council but was not carried, the votes being two *for* and nine *against*.

CLAUSE 11.

PRESIDENT.—I think this is taken from the Madras Act. I am afraid it is inapplicable to the conditions of Mysore. We do not disturb the possession with regard to *manyam* lands as long as they are in the possession of the hakdar's family. We take only the *jari* amount. The officiator has no status at all in regard to that land. He is entitled only to the potgi, and how that potgi is manipulated is a matter that rests entirely with Government. This has no analogy either in Bombay or Madras, and the difficulty arises by taking the provisions from the Madras Act. There is an anomaly in Mysore procedure. In Madras, they have enfranchised all inam lands at, I believe, $\frac{2}{3}$ths assessment and completely converted them into private property of the inamdars and have resorted to other measures for remunerating village officers. Potgi is arranged in this way. Suppose there is inam land attached to village service, and it is not only in the hands of the officiator for the time being, but also of the collateral branches of the family. There may be about six or ten numbers. What the officer who settles the potgi does is, to take the *jari* portion of the assessment on these lands, and cash payments attached to the office into consideration, and when these are in excess of the potgi fixed, half the excess is put on the service land as additional jodi. When the emoluments are below the amount of the scale, he raises the jodi until it reaches the full assessment; he increases the jodi not only on service lands in the possession of the *hakdar* but also on those in the possession of collateral branches. In settling the revenue to be derived from a particular tract, he says that with a view to provide for the remuneration of village officers, he enhances the assessment by so much. I was going to say incidentally yesterday that if you want to provide for the maintenance of widows and minors, you will have to enhance the potgi and the additional potgi

will have to come from the tax on land. You may not know it, but you will have to contribute all the same.

However, to return to the question of potgi, when potgi is fixed, however high the additional jodi may be, in some cases equal to the assessment, the lands continue still as service lands in the hands of holders, not necessarily in the hands of the officiator. When potgi is revised, you make them contribute also, if necessary, by levying additional jodi up to the assessment. This is the state of things in Mysore. All the calculation of emoluments from land is made by the Survey Department and the officiator has nothing whatever to do with it, and he cannot claim the land nor any emoluments from the land. He is entitled only to whatever potgi is settled by the Survey Department.

MR. RANGASWAMI IYENGAR.—Is the holder of an office entitled to alienate the *manyam* lands in his possession?

PRESIDENT.—No, he is not.

MR. RANGASWAMI IYENGAR.—Supposing he alienates it and dies, and his son succeeds to office, what should he do to get the land back? Is the man to move for the recovery of the land?

PRESIDENT.—He cannot. Government may put on full assessment on the land in the hands of the stranger.

MR. RANGASWAMI IYENGAR.—Is there any provision authorising the Government to levy full assessment? We have been going to the length of insisting on the holders to cancel alienations and get back the lands and preserve them as *manyam*.

PRESIDENT.—That is because there is a breach of the rule passed by Government that Inam lands shall not be alienated. This is the anomaly in the Mysore procedure. It is the Government which, by summary process, recovers the land when it is alienated or cancels the alienation. There is no suing in a Civil Court or any resort to the Revenue Court.

I am glad I have had this opportunity of disabusing the minds of Hon'ble Members about providing for the maintenance of the widow and the minor son. We have fixed what will suffice for the bare maintenance of the officiator, and if you want a portion of it to go to the minor or the widow, the assessment will have to be raised proportionately.

The Council adjourned to the next day (28-2-08).

FRIDAY, 28TH FEBRUARY 1908.

The Council met at 3 P.M.

PRESENT.—All except Mr. M. Kantharaj Urs and Mr. V. N. Narasimmiyengar.

PRESIDENT.—We have now to consider clause 11, sub-clause (2). This provision is taken from the Madras Act. (The corresponding section in the Madras Hereditary Village Offices Act was read by the Secretary.) I have to apologise to the Council for going on in this desultory manner. The law which we are enacting affects the fundamental principles of the constitution and working of village officers and it has to be carefully considered. We must decide the questions that arise not on abstract or general principles, but with reference to custom and the law applicable to them and as there seems to be some difference of opinion on questions of principle it is found necessary to consult the existing law and also consider the questions which should properly have been dealt with, when the bill was framed or when it was before the Select Committee. So it has become necessary for me to go into questions of principle.

The Madras section goes to the very root of the thing. As far as I can see, this is a controversial point. As matters stand now, this is likely to give rise to considerable difference of opinion and discussion in Council. Shall we therefore put off further proceeding with the bill and refer it again to the Select Committee to decide questions of this kind?

MR. ANANDA RAO.—The general impression is that no suit of this kind is likely to be filed.

MR. SRINIVASIENGAR.—Suits *will* arise. The only question for consideration is whether the party should be referred to a civil suit in the matter.

MR. ANANDA RAO.—Our idea was that he might go to the Civil Court for the recovery of the possession of the land and to the Revenue Court for the emoluments. In this connection reference may be made to sub-clause (1). I do not know what kind of case would possibly arise, which cannot be properly decided by a Revenue Court.

PRESIDENT.—Then you would omit proviso (ii) to sub-clause (1).

MR. T. ANANDA RAO.—What is the objection?

MR. SRINIVASIENGAR.—When a service land was made the subject-matter of a suit, I am not aware of any case where the parties were referred to the Civil Court in such circumstances. The provision in the bill is not in strict conformity with practice. There is, however, no amendment by anybody as far as I can see. Government may suggest an amendment and it may be formally considered. If it is vetoed, it may be submitted to His Highness with a full statement of the case. The fact is, I would myself suggest an amendment, but I did not give notice of it. I think no Civil Court has jurisdiction in such cases. What the bill says is that when the question of emoluments is before the Revenue Court in a suit instituted there, that Court has only to take cognizance so far as the cash is concerned. This is contrary to the practice which to my knowledge has all along prevailed and I think it is wrong.

PRESIDENT.—That is precisely my difficulty also. It had better be referred to the Select Committee.

MR. SRINIVASIENGAR.—This is a small matter, and it is undesirable that the whole bill should on its account referred to the Select Committee. At the next meeting the Government may propose an amendment and if that is lost, the case may be submitted to His Highness. Till now we have gone on with the several provisions of the bill irrespective of any formal amendment or motion. If you think fit, you can authorise this question to be discussed now whether there is a motion or not, provided any one member here is allowed to propose an amendment.

MR. K. P. PUTTANNA CHETTY.—Under this sub-clause, might not disputes between sharers of inam lands be made cognizable by Civil Courts? When there is a question as to possession between private parties, who enjoy the inam lands, it seems it ought to be made cognizable by Civil Courts. There is no question of the land being inam, but there is a question as to possession as between the members of the family. The point is whether such a suit would lie in the Civil Court or the Revenue Court. We may assume a case in which the [illegible] is not a party to the suit.

MR. SRINIVASIENGAR.—Such a case would not come under this Regulation.

PRESIDENT.—Is there any provision for the bill being referred to the Select Committee at this stage?

MR. NAGAPPA.—There is no provision like that. But we can take Mr. Srinivasiengar's suggestion. Please refer to Rule 46 of the Rules for the conduct of business of the Legislative Council. The mover of the bill may move that the bill be considered at a subsequent meeting.

MR. SRINIVASIENGAR.—In connection with the Estates Land Bill in Madras several members proposed that it might again be referred to a Select Committee since it was an important measure and since several members of the Select Committee had ceased to be members of the Council, and several important matters had not received the scrutiny that they deserved. No technical objection was raised to the re-reference suggested. But it was held that such a step was unnecessary, and that, if anything, it would simply further postpone the consideration of a measure which had so long been pending. In our case likewise, there is no technical difficulty

If this Council is of opinion that the bill requires re-examination, I don't think there is any objection to its being referred back to the Select Committee.

PRESIDENT.—If the members are agreeable, the consideration of the bill may be postponed as there are some questions of principle involved in this section as well as in one or two other sections. I have to apologise to the Council for not having looked into them earlier. If the Council agree to the suggested course, this bill may be postponed for further consideration next week. If you think fit, we may take up the Police Bill now or we may consider it along with the former and close this day's proceedings. I am sure that if any amendment is intended to be moved, the mover will give notice of it before the Council meets next.

It was decided to take up the Police Bill along with the Village Offices Bill and the next meeting was fixed for the 23rd March 1908 (Monday).

V. P. MADHAVA RAO,
President.

Sl. 6

G.R.S. 26]

File No.

Serial No.

Diary No. of letter replied to _____

General and Revenue Secretariat

( )

the 5th March 1908.

Date of issue _____

Signed by _____

Notification.

N. 374/Leg 15-07.

~~To~~

Under Rule 31 of the Rules for the conduct of business of the Mysore Legislative Council, the following bill together with a Statement of Objects and Reasons ~~thereto~~ is published for general information:-

By Order.

Secretary, M. L. C.

Mysore Legislative Council.

[Here enter the ~~accompanying~~ Bill ~~to amend the Mysore Registration Reg~~ I of 1903 ~~together with~~ the Statement of objects & reasons.]

To

The Compiler, Mysore Gazette,

for publishing the above in the Gazette & for supplying this Office with 50 spare copies of the Bill over.

~~SUBJECT.~~ as published.

~~RCS.~~
5/3/08

NS
5/3/08

NS 5/3/08

(Passed on the

A ~~Regulation~~ Bill to amend the Mysore Registration Regulation I of 1903.

Preamble.

Whereas it is expedient to amend the Mysore Registration Regulation I of 1903, His Highness the Maharaja is pleased to enact as follows:-

Amendment of section 88 of the Registration Regulation.

In para 1 of Section 88, the words "or the Deputy ~~Post Master~~ Postmaster General" shall be inserted after the words "Post Master General".

In para 2 of the same Section, the word "or" after "Registrar" shall be omitted and the words "or Deputy ~~Post Master~~ Postmaster General" shall be inserted after the words "Post Master General".

Statement of Objects and Reasons.

Under section 88 of the Registration Regulation, I of 1903, the Post-Master General of Madras is exempted from appearance in person or by agent at any registration office in any proceeding connected with the registration of any instrument executed by him in his official capacity, or to sign as provided in section 58. The duty of executing leases of Post Office Buildings has now been transferred

transferred to the Deputy ~~Post Master~~ Postmaster General. Hence it is intended by the proposed amendment to extend the exemption to the Deputy ~~Post Master~~ Postmaster General also.

Sl. 7.

Despatch

G.R.S. 26]

File No.

Serial No.

Diary No. of letter replied to 338

375-87

No. Legis 15-07

Office of the Secretary Mysore Legislative Council

To The Secretary to Government

&c

Member, Legislative Council

Date of issue 14th March 08

Signed by Mr. K. Mylar Rao

H. 7

Sir,

I have the honor to forward herewith under rule 31 of the rules for the conduct of business of the Mysore Legislative Council a copy of the bill to amend the Mysore Registration Regulation I of 1903, for the introduction of which before the Legislative Council permission was given at the last meeting of the Council, together with a statement of objects and reasons thereof. I have the

Legislative

Leg. Mbr.

over.

SUBJECT.

14/3/08

10 Sl. 8.

1st Councillors office)
Bangalore
Dated September 1908.

To

C. S. Balasundaram Iyer Esquire, B.A
Secretary to the Mysore Legislative Council.

Sir,

Please take notice that I intend making a motion ~~that~~ for introducing the bill to amend the Mysore Regulation Regulation I of 1903

at the meeting of the Mysore Legislative Council to be held on Thursday the 1st October 1908.

I have the honor to be,
Sir,
Your most obedient servant,

J. Thimmaiah

Member, Mysore Legislative Council.

11 Draft

Bill to amend Section 88 of the Mysore Registration Regulation I of 1903

Sir,

I beg to move that the Amendment of Section 88 of the Mysore Registration Regulation be taken up and read in Council As already

Draft

Ex-Officio Member.

26/9/06.

In the India he exempted from appearance just as all Port Officers are exempted in the India & as all superiors appear are exempted in Mysore

Stated It is for the purpose of exempting the Dy Port Master General from attending Magistrates Courts for the Registration of Boats Port here & agents & in the India the Act XI of 1877 exempts among others any officers of Govt. which includes the Port Master General or his Deputy

SUPPLEMENT TO

THE MYSORE GAZETTE

Published by Authority.

MYSORE, THURSDAY, OCTOBER 15, 1908.

Abstract Proceedings of the Mysore Legislative Council.

The Council met in the Public Offices, Mysore, on Thursday the 1st October 1908 at 3 P.M.

PRESENT.

V. P MADHAVA RAO, ESQ., C.I.E., Dewan (Presiding).

Ex-officio Members.

T. ANANDA RAO, ESQ., B.A., (First Councillor).

K. P. PUTTANNA CHETTY, ESQ., (Second Councillor).

Additional Members.

Official.

RAJAKARYAPRAVINA A. RANGASWAMI IYENGAR, ESQ., B.A., B.L.

H. J. BHABHA, ESQ., M.A.

RAO BAHADUR M. MUTHANNA, ESQ.

M. KANTHARAJ URS, ESQ., B.A.

S. NARAYANA RAO, ESQ.

K. S. CHANDRASEKHARA AIYAR, ESQ., B.A., B.L.

Non-official.

RAJAMANTRAPRAVINA C. SRINIVASIENGAR, ESQ.

V. N. NARASIMMIYENGAR, ESQ.

M. C. RANGIENGAR, ESQ., B.A.

B. NAGAPPA, ESQ., Bar-at-law.

SYED AMIR HASSAN, ESQ.

C. S. BALASUNDARAM IYER, ESQ., B.A., (Secretary).

The Secretary reported that the Mysore Newspapers Regulation, III of 1908, received the assent of His Highness the Maharaja on the 8th day of August 1908.

Bill further to amend the City of Mysore Improvement Regulation, III of 1903.

MR. T. ANANDA RAO moved for leave to introduce the above bill, and in doing so said:—The object of the short amendment to the City of Mysore Improvement Regulation, III of 1903, is to vest in the Board of Trustees the powers exercised by the Mysore City Municipal Council under the new Mysore Municipal Regulation, VII of 1906, in regard to the drainage, conservancy and sanitation of the areas brought under the control of the Trust Board. Opportunity has also been taken to propose an amendment to Section 4 relating to the constitution of the Trust Board by which the Board will have 9 Trustees instead of 8. The Board thus constituted will include the Mysore City Health Officer and the Deputy Sanitary Commissioner in the place of the Civil Surgeon.

MR. K. P. PUTTANNA CHETTY seconded the motion.

The motion was put to the Council and carried.

Bill to provide a law relating to Treasure-Trove in Mysore.

RAJAKARYAPRAVINA MR. A. RANGASWAMI IYENGAR moved for leave to introduce the above bill, and in doing so said:—Under Rule 30 of the rules for the conduct of business of this Council, I rise to move for leave to introduce a bill to provide a law relating to Treasure-Trove in Mysore. The proposed bill and its statement of objects and reasons have been published with Government Notification No. J. 2709—Legis. 19 of 1906, dated 6th March 1907. The statement clearly explains the need for the legislative measure in question and the changes introduced in the existing rules and the Indian Treasure-Trove Act, VI of 1878, the provisions of which have been generally adopted. It is scarcely necessary for me to take up the time of the Council especially at this stage by going more fully into details, and I request accordingly that the bill may be allowed to be introduced.

MR. K. S. CHANDRASEKHARA AIYAR seconded the motion.

The motion was put to the Council and carried.

Bill for the Regulation of the Possession and Sale of Poisons in Mysore.

MR. K. P. PUTTANNA CHETTY moved for leave to introduce the above bill, and in doing so said:—Mr. President,—The measure I am entrusted with, deals with the possession and sale of poisons within the State. The question of restricting, by legislation, the possession and sale of poisons has been under the consideration of Government ever since 1894. It was then suggested to Government that the Bombay Act, VIII of 1886, might be introduced into Bangalore. It was however understood that the Act did not efficiently serve the object which its framers had in view. Meanwhile, the Government of India had under consideration a proposal for an enactment on the subject for the whole of India. This Government deferred taking further action till the Government of India passed the Poisons Act. Now that the Poisons Act (I of 1904) has been enacted and rules have been framed under it by almost all the Local Governments in British India, it is thought desirable to introduce a similar measure in Mysore.

I need not explain to you in any detail the necessity for such a measure. The ease with which poisons can be procured and the dastardly purposes to which they can be, and have been, used make it necessary that Government should exercise, in the interests of the people, some general control over the possession and sale of poisons. In the absence of such a measure, it is possible for any one to get hold of any quantity of poisons for any purpose and to escape notice or detection. The object of the present measure is, therefore, to provide for such a general control. The scope of the bill is very limited. It is only a

permissive measure, empowering Government to make rules for the objects specified therein. Its success will therefore depend upon the rules framed and upon the manner of enforcing them.

I shall now briefly advert to a few of the provisions of the bill. Clause 2 empowers Government to control the sale of poisons within Municipalities. Clause 3 authorizes the prohibition of the importation of white arsenic except under a license. This poison is particularized, because it is commonly used in criminal cases of poisoning and is also easily procurable. Further, by Clause 6 power is taken to apply the provisions relating to white arsenic to any other poison. Clause 10 affords protection for *bona fide* dealing with poison by professional men who have to employ them in the ordinary course of their business.

I must however refer to one point in some detail on which our bill departs from the British Indian Act. And that is with regard to the power vested in Government under Clause 10 (2) to make rules for the control of transactions by chemists and druggists and other professional men with regard to certain poisonous drugs to be specified by Government. Our recent experience has demonstrated the necessity for such a provision. I need not bring to your recollection the facts connected with the atrocious series of murders recently brought to light in Bangalore. How the miscreants used chloroform—primarily invented for the relief of pain—for effecting their nefarious objects and how easily they were able to obtain it, these are well-known facts. It is indeed regrettable that such poisonous drugs, which may be used with fatal results, should be easily procurable from chemical shops, and it is, therefore, proposed to take power under the bill to provide that with regard to poisonous drugs to be specified by Government the medical practitioners and other professional people should maintain registers with full particulars and allow examination of the registers and the poisons exposed for sale.

I now move that leave be granted to introduce the bill.

Mr. M. Kantharaj Urs seconded the motion. The motion was put to the Council and carried.

Bill to amend the Mysore Registration Regulation, I of 1903.

Mr. T. Ananda Rao:—Sir,—I beg to move that the amendment of Section 88 of the Mysore Registration Regulation be taken up and read in Council. As already stated, it is for the purpose of exempting the Deputy Post Master-General of Madras from attending at Registration offices for the registration of documents to which he is a party. In British India, he is exempted from appearance just as all British Government Officers are exempted in British India and as all Mysore Government Officers are exempted in Mysore.

Mr. S. Narayana Rao seconded the motion.

The motion was put to the Council and carried. The bill was then finally considered in Council and was unanimously adopted by it.

The Village Tank Panchayet Bill.

Mr. K. P. Puttanna Chetty moved for the introduction and reading of the above bill, and in doing so said:—Sir, I beg to move that the Village Tank Panchayet Bill, which has been published in the Gazette of the 10th September, be read in Council. The object of the bill and the main principles involved in the measure are sufficiently clear from the statement of objects and reasons which has also been published, and it is hardly necessary for me to explain these at any great length.

To an agricultural country like Mysore, the importance of its irrigation works cannot be overrated; and, as might have been expected, the subject of tanks has engaged the attention of the Government for several decades past. There are in the State nearly 40,000 tanks, large and small, about 30,000 of which yield revenue to Government. Every valley and every drainage area has had a bund thrown across it for storing the drainage of the country, so

much so that, as observed by a great engineering authority, it is extremely difficult to find a site suitable for a new tank. It was therefore recognised at a very early stage that little remained to be done by the Government in the matter of irrigation facilities beyond restoring and maintaining the old works.

To take up first the subject of maintenance of tanks, it was found that the majority of the tanks were in a state of the utmost neglect. This was due to the customary obligations of the raiyats to keep their tanks in order not being enforced. All that a raiyat need be called upon to do in the way of maintenance of tanks is to throw a basketful of earth here and there, to fill in the gullies on the slopes of the bunds, remove prickly pear and rank vegetation from the bunds, and such small items of work, timely attention to which would save the tank from falling into disrepair. It is impossible for any Government agency to attend to these details; and, as a result of not enforcing the raiyats' obligations, it was found that tanks were every day hopelessly getting into disrepair. The Government therefore found that it was time the customary obligations of the raiyats were enforced, and accordingly in the year 1873 they passed the Tank Maintenance Rules for enforcing these obligations. It is under these rules, as slightly modified by a Government Notification issued in December 1904, that the maintenance of tanks by the raiyats is at present regulated.

The rules of 1873 refer only to tanks which are already in a state of efficient repair or have been restored and brought to a standard of safety and formally handed over to the raiyats for upkeep. As regards tanks which had not been restored to a standard of safety, it was considered that raiyats could not reasonably be called upon to restore or repair works which had been neglected for a number of years. The question of the repair and restoration of these neglected tanks engaged the anxious consideration of the Government for years, but no definite steps were taken in the matter until 1887, when a distinction was drawn between tanks yielding a revenue of over Rs. 300, which were called major tanks, and those yielding a revenue of Rs. 300 and under, which were called minor tanks. Under this classification there are 2,388 major tanks and 26,682 minor tanks in the State. The restoration of the former was to be carried out by the Public Works Department, subject to the levy of contribution from the raiyats. We are not, however, concerned, in the bill before us, with the subject of the restoration of major tanks, and I shall not refer to it again. As regards the minor tanks which form the great bulk of the tanks in the State and which have aptly been described as "the life of the country," these were, under the scheme sanctioned in 1887, to be restored by the Government and the raiyats jointly, the Government undertaking to do the required stone and masonry work, whenever the raiyats carried out the earthwork. After restoration, the maintenance of these tanks was to be enforced under the Rules of 1873. This scheme known as the Minor Tanks Restoration Scheme sanctioned in 1887 is still in operation, and it is under it that minor tanks throughout the State are now being restored.

These, then, are the rules in force in the State in regard to the two matters dealt with in the bill before us, the restoration and repair of minor tanks and the maintenance of all restored tanks, major and minor, *viz.*, the Minor Tank Restoration Scheme of 1887, in regard to the former and the Chief Commissioner's Rules of 1873, as amended in 1904, in regard to the latter. Let us consider what the results have been of the operation of these rules during the past several years.

Notwithstanding all the efforts made by Government for the proper preservation and restoration of these irrigation works, we cannot conceal from ourselves the fact that a large number of them are still in complete ruin and that many of the restored tanks themselves have been allowed to again fall into disrepair. Under the Minor Tank Restoration Scheme, altogether 2,304 tanks have been repaired since the scheme was started, or on an average of 110 per year. At this rate of progress it will be more than two centuries before all the minor tanks in the State are repaired. And as regards maintenance of restored tanks it has been a frequent complaint that the village officers on

whom the duty of enforcing the tank maintenance rules devolves have been slack in the performance of their duty, and that the higher Revenue officers have also been negligent in the matter. There have been many instances in which the raiyats neglected to do the necessary earthwork and the Public Works Department has had to undertake for a second time the restoration of such tanks to preserve them from complete ruin. Much has been done during the past few years to remedy this unsatisfactory state of affairs by the issue of orders insisting on the personal responsibility of Revenue officers to see to the proper maintenance of tanks.

While it is to be hoped that these measures will remedy matters to some extent, it appears to Government that something more is necessary before a radical improvement of the situation can be looked for. I do not say that the principle of the existing rules which insist on the responsibility of the raiyats for the maintenance of tanks once restored requires re-consideration—I have already shown that it is impossible for any but the raiyats interested in the tanks to maintain them—or that any material alterations are necessary in the scheme under which the restoration of minor tanks is carried out by the Government and the raiyats jointly. In fact a Committee appointed by Government in the year 1903 to consider the whole question was of opinion that no material changes in these rules were necessary. The rules are good enough so far as they go, but there are two circumstances which militate against their efficient working. The first is the want of a spirit of co-operation among the raiyats and the second is the absence of sufficient inducements to make them take a real and personal interest in their tanks. Undue importance was at one time given to the responsibility of Government for the upkeep of the tanks, the raiyats' liability being altogether ignored, and when Government found that its costly agency could not possibly undertake the management of all the tanks in the State, the raiyat was called upon to take charge of the majority of the tanks. But the raiyat had by this time lost all traditions of combination for works of public utility, and it is easy to see that without such combination it is impossible that the rules relating either to the maintenance of restored tanks or to the repair and restoration of minor tanks, both of which require concerted action on the part of the raiyats, can be satisfactorily carried out. It is an every-day experience of Revenue officers that the maintenance works required to be done by raiyats to tanks are often entirely neglected by reason of the obstinacy or default of a few recalcitrant raiyats, often only one or two. Again it often happens that, when a tank is to be restored, the majority of the villagers agree to pay the contribution demanded or to do the necessary earthwork, but the proposal falls through on account of the obstructive attitude of an unwilling minority. The first thing therefore to be done, if the present unsatisfactory state of things is to be remedied, is to educate the raiyats to unite for works of common benefit.

The second defect in our system of tank management to which I have referred is the absence of sufficient inducements to make the raiyats take any interest in the proper upkeep of their tanks. The maintenance of tanks has hitherto been treated as a matter in which Government is solely concerned and for which Government agency is alone responsible, while the principal factor in the problem, namely, the raiyat owning lands under the tanks, has been more or less ignored. The raiyats' part has been to unwillingly and sullenly carry out, if he could not evade, what was demanded of him by the village officers and revenue officers. Nothing has been done to interest the raiyat in the tank or to secure his willing and intelligent help and co-operation in the matter of its restoration and maintenance. In addition to educating the raiyats to co-operate with one another in their communal affairs, it is therefore necessary that an effort should be made to create in them an interest in the maintenance of their tanks. And if this is to be done there should be no feeling of compulsion when the raiyats have to do any work to their tanks. They should be given a substantial voice in the measures necessary for the maintenance of the tanks. The powers to execute the necessary works should be given to them, instead of their being pressed and compelled to do those works; and the

control over the funds that may be set apart for the purpose of repairing and maintaining tanks should also be transferred to them. They should be made to regard the tanks as their own and be induced to attend to their repairs and maintenance with the same readiness and interest as they would show in renewing the thatch to their houses or repairing the hedge of their gardens. In short, the raiyats' interest in the tanks can best be secured by allowing them a certain measure of self-government in respect of the tanks. It is with this view that it is proposed to constitute Village Panchayets for the control of tanks, composed of the Patel and Shanbhog of the village and three or more members elected by the raiyats from among themselves; and the object of the present bill is to authorise the constitution of such panchayets and to lay down their powers and duties. In giving over the control of tanks to the raiyats, their responsibilities and duties remain just the same as before. The bill does not relieve them of any of their existing obligations in regard to the maintenance, repair or restoration of tanks, nor does it impose any additional obligations on them. The bill only alters the agency by which these obligations are enforced. In place of the purely official agency now existing, the bill substitutes the agency of panchayets composed mostly of members elected by the raiyats themselves.

I should here like to remind the members of the Council of the fact that the constitution of Village Panchayets to deal with village tanks is not a new idea now started for the first time. On the contrary, there is strong evidence to show that village committees for the supervision and maintenance of tanks existed in South India from very early times. In the report of the Archæological Survey of British India for the year 1903-04, there is an interesting monograph from the pen of Mr. V. Venkayya about "Irrigation in Southern India in ancient times," in the course of which the writer makes some remarks about the committee for supervision of tanks which, he says, each village in the Tamil country seems to have had in ancient times, and which we may safely assume was to be found in the Kanarese country as well. "At Uttaramallur in the Chingleput District," says Mr. Venkayya, "there are two inscriptions belonging to the beginning of the 10th century, which furnish full details about the constitution of village assemblies and the mode of selection of members to them." . . . "We are there told that the village assembly consisted of several committees, of which the committee for supervision of tanks was one. This body consisted of six members who held office for 360 days and then retired. If any one who served on the committees was guilty of any offence, he was removed at once. The duties entrusted to these committees are nowhere clearly laid down. But those of the committee for the 'supervision of tanks' with which alone we are at present concerned, do not require any detailed explanation. It may be presumed that all endowments made in favour of tanks were entrusted to them and that they had to invest money endowments in the best possible way. We may suppose that they utilised them in reclaiming waste land and cultivating it, in order to pay the interest on the endowment from the produce. They had apparently to look after the cultivation of lands granted to tanks. The income from both these sources had to be applied to meet the charges of the annual or periodical removal of silt in tanks and for repairs so far, I suppose, as funds would permit. Fines to be credited to the tank fund were levied by them." . . . "The king does not appear to have had any direct control over the upkeep of tanks. He could of course enforce the obligations incurred by village assemblies as trustees of endowments made for tanks." It will be seen from this that in former times the control of tanks vested not in the Government but in the village community, and that this control was exercised in a well-organised and systematic manner, but the information that we now possess does not enable us to say how or when this ancient indigenous institution ceased to exist.

The question may be raised whether it is wise to hand over the numerous irrigation works in the State on which so much of the revenue of the State and the prosperity of the people depend, to panchayets of villagers. Under the existing rules, the Revenue officers can compel the raiyats by coercive processes

to carry out the maintenance and repair of tanks. In spite of this power in the hands of the Revenue officers maintenance and repairs have been neglected. Will the raiyats show any more zeal in the matter when the enforcement of the rules is handed over from the Deputy Commissioner to their own panchayets and when the Deputy Commissioner can exercise coercion only on the application of the panchayets? This question has been asked and my answer to this is that the Government have every confidence that the proposed scheme will revive a communal spirit which will effect what any amount of coercion on the part of the Revenue officers has failed and must fail to achieve. But the Government fully recognize the fact that it is possible that they may be disappointed in their expectations; and, having regard to the enormous importance to the State and the people of the material interests dependent upon the upkeep of the tanks, they do not propose that the new scheme should be brought into force throughout the State at once. As explained in the statement of objects and reasons, the bill does not contemplate the constitution of panchayets compulsorily in places where the villagers do not wish to have them. The panchayets are to be formed only in villages where a majority of not less than two-thirds of the villagers wish to have them. And even where the majority of villagers decide to have panchayets, Clause 3 of the bill introduces a further limitation by laying down that panchayets are to be constituted only in places where the Government may consider it expedient to do so. The scheme will therefore be introduced only in villages where the Government may be satisfied that the conditions are favourable to its introduction. There should on the one hand be intelligent villagers who can co-operate for objects of common good, and on the other hand Amildars and Deputy Commissioners who are capable of working the scheme with zeal and sympathy. I fear that, with the disintegrating influences of modern civilisation, the factions existing in numerous villages, and the declining personal influence of the village officers and of the Amildars, it is only in a few villages that these conditions can, for some years at least, be found to exist. Far from there being therefore any danger of all or the majority of the tanks in the State being left entirely to the management of Village Panchayets who may or may not keep them in order, the problem which the Government will have to face when the bill is passed into law will be whether there are many places in which it could be successfully worked. And even in the few places where the panchayets may be constituted, clause 17 of the bill provides a remedy in the case of incompetency, default or abuse of powers on the part of panchayets by empowering Government to supersede the panchayets permanently or for a time. I may assure the Council that the working of the scheme will be most carefully watched by the Government and that they will not lose sight of the necessity to take careful stock of the position at short intervals in order to bring clause 17 into operation where necessary to prevent further deterioration of tanks which may have been neglected by panchayets.

Turning now to the powers and duties intended to be vested in the Tank Panchayets, it will be seen that as an immediate consequence of the constitution of a panchayet in a village, the enforcement of the Tank Maintenance Rules in that village will thereafter vest in the panchayet; and, as a corollary to this, the panchayet will have the power, which now vests in the village patel and the hobli shekdar or Revenue Inspector, to apportion the work required for the maintenance of the tank or tanks in the village among the raiyats according to their respective obligations; and, if a raiyat fails to do the work that is allotted to him or prefers to commute his quota or labour into a money payment, the panchayet will itself get the work done out of the funds at its disposal and recover the cost from the raiyat. The duty of getting work done which a raiyat fails to do now rests with the patel of the village; but, as the patel holds no funds for the purpose, this arrangement has not been found to be satisfactory in practice. Besides, when the patel by himself gets the work done, questions are likely to arise as to the cost actually incurred, but when the duty is entrusted to a panchayet of the leading raiyats their decision in such matters will be accepted without question.

The power to grant the beds of tanks for temporary cultivation of quick-growing crops is at present exercised by the Amildar and the Deputy Commis-

sioner, and is proposed under clause 12 of the bill to be transferred to the Tank Panchayet. Clause 13 provides that in order to avoid the waste of water that may be caused by different raiyats commencing the sowing of wet crops at different times, the panchayet may decide on the time when such sowing operations should be commenced and also empowers the panchayet to regulate the issue of water from the tank. The next clause of the bill, clause 14, also relates to the regulation of the issue of water from tanks, but it introduces an important innovation. This clause provides that a Tank Panchayet specially empowered by Government in this behalf with the consent of a majority of not less than two-thirds of the raiyats whose interests are affected may, in any year, having regard to the quantity of water available in the tank, impose such restrictions as it may consider necessary on wet cultivation below the tank. What now happens in seasons of short rainfall is that all the raiyats holding wet lands under a tank put their lands under wet cultivation, even when it is quite certain that the supply of water in the tank will not suffice for them all, with the result that there is a general scramble for water and all of them suffer from shortage, if not total failure, of crops. Similarly, there is now no restriction against any raiyat holding land under a tank planting sugarcane anywhere below the tank. The result is that sugarcane is planted in small patches here and there, and as this crop requires water nearly all the year round, there is considerable waste of water. To remedy this serious defect in the existing system, this clause provides that a panchayet specially empowered by Government as mentioned above may decide what extent out of each wet holding shall be allowed to be cultivated with wet crops, and, as for the cultivation of sugarcane, to select a suitable piece of land as near the sluice of the tank as possible and parcel it out among the different raiyats who may be desirous of cultivating sugarcane, and if the water in the tank is insufficient even for this to prevent such cultivation altogether. If, in accordance with a decision of the panchayet under this clause, any holder of wet land is not allowed water to irrigate his land and is prevented from raising wet crops thereon, it is proposed to allow a remission of half the assessment on the land. This is the most important provision of the bill.

Several questions are likely to be raised in connection with these provisions. In the first place, is it likely that a majority of wet land holders in any village will be willing to put it in the power of the panchayet to prevent the supply of water for irrigating their lands? Secondly, will the Government be justified in granting a remission of half assessment in such cases? Thirdly, will not this concession entail a serious loss of revenue to the State and will it not lead to abuse by encouraging the holders of wet lands to put their lands out of cultivation in order to secure the remission of half the assessment? To take up the last of these questions first, I think it may confidently be asserted that the panchayet or, for the matter of that, any raiyat will not put wet lands out of cultivation merely for the sake of obtaining a remission of half the assessment. It is well known that the Government assessment on wet lands represents but a small proportion of the income from the lands, and it is not to be supposed that anybody will willingly forego the profits to be derived from wet cultivation except for good and sufficient reason. There need not therefore be any fear of any serious loss of revenue to the State or of the concession leading to any abuse.

The second question is somewhat more difficult, *viz.*, whether the State would be justified, in view of its settlement system, in granting remissions in cases where wet crops cannot be raised on account of insufficiency of water. In Mysore we have followed the Bombay system of settlement under which wet lands are classed with reference to the capacity of the tanks to supply them with water for irrigation, and the assessment on them is fixed with reference to the average of a series of years, good and bad, and making sufficient allowance for occasional deficiencies of rainfall and other vicissitudes. Under this system the Government is not bound to grant either full or partial remission in bad years and the proposed system of granting remissions may therefore be objected to on the ground that it will affect the integrity of the existing settle-

ment. With reference to this I may say that, while I am prepared to hold that a system of settlement, under which a soil assessment and a water assessment are separately imposed on wet lands and the water assessment is remitted when no water is given for irrigation, has the advantage of simplicity and elasticity and may therefore be preferable to our existing system, it is now too late in the day to think of adopting such a system, and the Government have no intention of disturbing the existing system of settlement; but, they cannot shut their eyes to the fact that, in spite of all the care taken by the Survey and Settlement Department in classifying and assessing lands, more land has sometimes been entered in the *atchkat* of a tank than can properly be irrigated by it, and that although no doubt the assessment fixed on the basis of the average of a number of years works out fairly and equitably in the long run, the vicissitudes of the season often cause hardship in individual cases and in particular years; and, while the Government is not bound to grant full or partial remission in bad years, they have as a matter of fact been giving such remissions in cases of widespread drought. The present proposals go a step further in the same direction. Although no remission is claimable as a matter of right in cases where wet crops cannot be raised on any lands on account of insufficiency of water in a tank, yet as a concession and as an incentive to the raiyats to invest their panchayets with the useful powers contemplated in this clause, the Government propose to allow half remission in all cases where wet lands are thrown out of cultivation under the orders of a panchayet, treating them as analogous to the case of wet lands under tanks which have breached. And this brings me to the question whether the raiyats are likely to agree to put such a power in the hands of the panchayets. It is true that the people have almost lost the capacity for combined action, which implies readiness to make small personal sacrifices for the common good, and it is difficult to say how far the raiyats in a village, especially those holding lands at a distance from the sluice of the tank, will be willing to abide by a decision of the panchayet that in view of the insufficiency of water they should not raise wet crops upon any or all their lands; but, as observed in the statement of objects and reasons, if they are prepared to accept such a decision and show some self-restraint, this will be a measure of the extent to which the spirit of combination and self-sacrifice, which the Government wish to revive, has been brought into existence.

I have already referred to the fact that if the raiyats' personal interest in the tank is to be evoked, the control of the funds set apart for the repair and maintenance of tanks should be entrusted to them. It is therefore proposed that these funds, *viz.*, money payments from the raiyats in lieu of labour and a portion of the irrigation cess fund collected in the village, should be credited to a fund called the Tank Fund to be controlled by the panchayet. As an additional inducement to the raiyats to constitute panchayets, it is also proposed that several items of receipts which are now credited to the general revenues of the State, as for instance, the sale proceeds of the right of fishing in the tank and of the right of grazing in the tank bed, etc., should also be credited to the Tank Fund. These items will go some way towards reducing the cost which each raiyat would have otherwise to incur. Any advance or loan which the panchayet may obtain from the Government is also to be credited to this fund.

The only other clause of the bill to which I need now refer is clause 15 which deals with the construction, restoration and improvement of minor tanks. Under the existing system, as already explained, Government does not undertake such construction, restoration or improvement unless the raiyats come forward and do the earthwork, when the Government gets the masonry and stone work executed. This clause lays down that if the panchayet undertakes to execute such construction, restoration or improvement, the Government may entrust to the panchayet all the work required with the exception of stone and masonry work which will be done at the cost of Government. It is also laid down that the Deputy Commissioner may at his discretion entrust the execution of masonry and stone work also to the panchayet.

I have briefly explained the main principles underlying this measure, and it is unnecessary at this stage to go into its provisions in detail.

We hear so much in these days about the disappearance of the old village communal system of the country, and the Governments both of British India and of the Native States have frequently been asked to try to revive the ancient system. Here, in Mysore, we have had representations made during the meetings of the Representative Assembly asking for the constitution of Village Courts for the settlement of petty civil and criminal cases. There is a general feeling at the present time that we should try and revive this ancient indigenous institution of the Village Panchayet. Whether the old communal spirit can at all be revived is a matter which it is impossible for any one to predict with certainty; but the experiment is certainly worth trying. The scheme proposed in the bill before us is a practical attempt in this direction, and I commend it to the sympathetic consideration and support of the members of this Council. Personally I have every hope that the scheme will be a success in its primary object of improving the condition of tanks and in its ulterior object of reviving the communal spirit. I look forward to a day when the raiyat will have so identified himself with his tank as to feel a proprietary interest in it and a pride in keeping it neat and trim without any prompting from the officials. When such a feeling has been engendered in the raiyats it is possible that they may employ a Nirganti to watch the tank and put earth on it to fill up the holes and gullies and pay him either from their tank fund or by voluntary contributions. They may revive the old system of keeping a buffalo for carrying earth to be put on the bund. The raiyats who personally work in the field may set apart a day in the week or month and turn out to do work on the bund, the non-labouring classes contributing in money or grain for their share of the work. A rivalry will arise between neighbouring villages and one will vie with the other as to whose shall be the best kept tank. And when once the communal spirit is infused into the minds of the people and the raiyats develop the faculty of wisely administering the details of tank management, there is no reason why we should not entrust them with even a larger share in administering their own affairs. The panchayet may in course of time be able to prevent the occurrence of abuses in the collection of revenue, and in the sale of lands for arrears or on darkhast, settle differences among the people, manage their communal concerns and generally act as a committee of vigilance on behalf of the village community. But these are distant visions no doubt.

With these remarks, Sir, I move that the bill be read in Council.

MR. K. S. CHANDRASEKHARA AIYAR seconded the motion which was put to the Council and carried.

MR. K. P. PUTTANNA CHETTY then moved that the bill be referred to a Select Committee consisting of Messrs. Rajakaryapravina A. Rangaswami Iyengar, M. Kantharaj Urs, S. Narayana Rao, V. N. Narasimmiyengar and Nagappa and the mover.

MR. NAGAPPA seconded the above motion.

RAJAKARYAPRAVINA MR. A. RANGASWAMI IYENGAR proposed the addition of Rajamantrapravina Mr. C. Srinivasiengar to the Select Committee and this was seconded by Mr. M. Kantharaj Urs. Both motions were adopted and a period of three months was fixed for the report of the Select Committee.

Bill further to amend the Code of Civil Procedure.

Mr. S. NARAYANA RAO:—Sir, I beg to present the report of the Select Committee on the bill to further amend the Code of Civil Procedure and in doing so, I have to observe that the Committee have unanimously approved of the bill referred to them on the 24th February last.

I desire to call attention to the recommendation made by the majority of the Committee in their report, suggesting an improvement to an earlier part of the Section 310A than that covered by the bill.

This Section 310A was introduced into the Code by Regulation III of 1906, and was intended to afford relief to certain judgment-debtors and others

whose immoveable property was sold in execution of decrees by enabling them to get the sales cancelled on payment of a certain amount of compensation to the purchasers and of the amount due under the decree to the creditor. The section may, for our present purpose, be viewed as consisting of two parts. The first part deals with the persons who are entitled to apply for cancellation of sales, while the second part lays down the terms on which the sales may be cancelled.

The bill now before the Council deals with the second part only, remedying certain formal defects therein and providing for an appeal against an order passed under this section. The amendments proposed in these respects are admitted on all hands to be necessary and desirable and the Committee have unanimously approved of the same, as I already submitted.

The further recommendation made by the Committee in their report refers to the first part of the section. The Committee felt it was not open to them to deal with this part of the section as being beyond the scope of the bill referred to them.

As this part of the section now stands in the Regulation, it restricts the persons who can apply for cancellation of the sale to the judgment-debtors and to such others as have acquired their title to and interest in the property before the same was attached, and in cases of mortgaged property before the decree directing the sale thereof was passed.

In British India the scope of this part of the section was enlarged (*vide* Section 2 of Act V of 1894) by declaring it open to every person who acquired his title to or interest in the property at any time before the Court sale thereof, to come in under this section and apply for cancellation of the same. This provision is retained in the new Civil Procedure Code of 1908 also. There are strong reasons in favour of the recommendation made by the Committee and it does not militate against the general policy or principle involved in the section. However, if the amendment recommended by the Committee cannot be regarded as part of the bill, it may be left out, and we may proceed to deal with the present bill which is intended to remove certain hardships experienced in working the section as it stands

I now move, under clause 46 of the Rules for the Conduct of Business, that the bill and the report of the Select Committee be taken into consideration by the Council.

Mr. Chandrasekhara Aiyar, in seconding the motion, added that the question of introducing the Civil Procedure Code as recently revised in British India was likely to be taken up shortly, and that the further recommendation of the Select Committee might be dealt with then.

Mr. Nagappa proposed that the consideration of the Select Committee's report might be deferred to another meeting.

Rajamantrapravina Mr. C. Srinivasaiengar seconded this proposal, and after some discussion the Council resolved to take up the further consideration of the bill at a future meeting.

The Village Offices Bill.

Mr. T. Ananda Rao:—Sir, I beg to move that the following amendments to the Village Offices Bill be now considered:—

(*i*) *Clause 7, sub-clause (5).*—The words "subject to any rules which may be made by Government in this behalf under Section 22" shall be substituted for the words "under rules made under Section 22" appearing in line 1 of this sub-clause and placed at the beginning thereof.

(*ii*) *Clause 8, sub-clause (2).*—The word "personal" shall be inserted between the words "the" and "law" in the fifth line of this sub-clause, and the word "on" shall be inserted before the words "one of his heirs" in the eleventh line thereof.

(*iii*) *Clause 8, sub-clause (3).*—In the proviso to this sub-clause, the words "or removed" shall be inserted between the words "dismissed" and "dies" appearing in line 1.

(*iv*) *Clause (9).*—In para 2 of this clause, the words "within a given time" shall be substituted by the words "within such time as may be allowed by the Deputy Commissioner or Assistant Commissioner."

Of the amendments proposed, Nos. (*i*), (*ii*) and (*iv*) do not call for any remarks. The amendment in clause 8, sub-clause (2), by the insertion of the word "personal" between the words "the" and "law" would set at rest any doubt as regards the law applicable to succession to village offices in unalienated villages.

Mr. K. P. Puttanna Chetty seconded the motion, which was put to the Council and carried.

Mr. Ananda Rao then moved that the bill as amended be passed by the Council. In doing so, he said :—Sir, I beg to move that the Village Offices Bill as amended be now taken up and passed by this Council. The success of the Revenue Administration depends to a great extent upon the efficiency of the village service. A measure of this kind to regulate appointment to that service has been under consideration for a long time till it is now for this assembly to enact it into law.

Mr. K. P. Puttanna Chetty seconded the above motion.

Rajamantrapravina Mr. C. Srinivasiengar :—Sir, With your kind permission I beg to say a few words before I give my vote in favor of this bill. This is a measure of considerable importance that affects both the Government and the public in general and our village officers in particular. The law on the subject has till now been scattered over a large body of rules, standing orders, executive orders and decisions of Government, many of them not known or accessible to the public. The enactment which has now reached its final stage has for its object the removal of many anomalies and misconceptions which have hitherto existed on this important subject. There have been doubts, uncertainties, ignorance and differences of opinion with regard to several matters connected with village administration. In short, this legislation aims at evolving order out of chaos, and has in my opinion not been undertaken a moment too soon.

Sir, through your patience and forbearance we have had an exhaustive and interesting debate in the course of which all shades of opinion have been elicited and much useful information collected and the subject discussed threadbare from every stand-point. In the result, the measure is now emerging from the crucible in a form which I think ought to be acceptable to all concerned and upon which all of them are entitled to congratulate themselves. It is a pleasure to me when out of office to find myself associated in however insignificant a manner with the passing of a measure in the inception of which I had something to do while in office.

I do not propose to detain the Council by any detailed examination of the various provisions of this bill. Suffice it for me to say that, among other matters, ambiguous or obscure expressions have been clearly defined, suitable provision has been made for appointments and punishments, the principle of heredity has been scrupulously kept in view even to the extent of applying it to absentee heirs and heirs however remotely connected. Provision has been made for suits, applications and references ; in the matter of appeals, we have been extremely liberal in that we have allowed three appeals, a thing which does not to my knowledge obtain anywhere else ; unnecessary restrictions upon alienation have been abrogated ; in short, nothing has been omitted the inclusion of which is calculated to enhance the usefulness of this measure, which I may say has the further merit of being as concise as it is self-contained. If one body of persons more than another is likely to be benefited by this enactment, it is the holders of alienated villages in the State whose troubles are at present as great as their number is legion. Under the new law, they will,

in case they show themselves deserving of the confidence of Government, be given large powers, a judicious exercise of which will enable them to more effectually control their staff of village servants. Owing to the complex nature of the subject, this Council has been confronted at almost every step with difficulties of no ordinary magnitude which well nigh threatened to be insuperable; but thanks to the sympathetic Government willing and ready to make concession wherever this could be done without the sacrifice of principle or the impairment of efficiency, we have happily been enabled to surmount those difficulties in a manner eminently satisfactory. Some idea of the extent of time and attention and labour bestowed by us upon the bill may be formed from the fact that this short measure of not more than 22 sections occupied the Council no less than eight sittings of not less than several hours duration each. I have heard it said in some quarters that the bill is being rushed through with inordinate haste, and that due regard is not being paid to custom and vested interests. In my humble opinion, this is a baseless charge. As a matter of fact, all vested rights have been recognized; the position and prestige of our village offices have been strengthened and raised; and everything has been done to make the measure as popular and efficient as could be done under the circumstances. I am sure that when the provisions of the bill, as now revised and approved by Council, come to be generally understood, they will be better appreciated, and welcomed by the public with gratification and gratitude.

It only remains for me now, Sir, to thank you for allowing us free latitude and encouraging us to speak without reserve even at the risk of the discussion sometimes lapsing into desultoriness; and, I may assure you that this indulgence has not been thrown away; for, as the bill now issues from the legislative anvil, it is a document on which the Province may well be congratulated.

Mr. B. Nagappa.—Sir, I fully concur in the sentiments so eloquently expressed by Mr. Srinivasiengar. As observed by him, the bill contains clear provisions of law on many important questions on which there were conflicting decisions. It embodies all the provisions of law on the subject which were hithereto found scattered in the rules, proceedings and standing orders of Government, which were not easily accessible to the legal practitioner and much less so to the public. It also contains some important changes in the existing law.

It was hitherto a difficult task for a legal practitioner to advise upon any question relating to the holders of village offices, owing partly to the unsatisfactory state of the law and partly for the want of a regulation containing the whole law on the subject. The absence of any settled principle to guide the Revenue Courts led to the unhappy increase of litigation.

Now that this bill which embodies a clear exposition of law is just about to be passed into law, we may expect with confidence that it will prove beneficial to the large section of the community to which it applies. Being fully convinced that this is a beneficent measure, I give my vote for the passing of this bill.

In conclusion, Sir, permit me to express my sincere thanks to you for the kind and sympathetic treatment accorded and the patient hearing given to the non-official members.

The motion was put to the Council and carried.

President:—Gentlemen, I need not say how equally gratifying it is to me to see the bill passed at this sitting; and it is a source of very great pleasure to me that such kind and appreciative remarks regarding my share in the passing of this bill have fallen from Mr. Srinivasiengar who was so honorably connected with the past administration and whose experience in so many different branches of the State service has been placed at the disposal of the Council to the great benefit of the discussions that have taken place here. An appreciation from him who has such intimate knowledge of the subject of this bill (we may now call it a Regulation) is most valuable and will go a great way to assure the public and the village community in particular that the Regulation in

which they are so interested is the outcome of long and full discussion of the subject from every point of view. They will all feel re-assured from the remarks of such an authority as Mr. Srinivasiengar that every interest has been considered and safeguarded. I may say the same as regards the remarks made by Mr. Nagappa who is another non-official member. Mr. Nagappa is in addition a representative of the agricultural community and his remarks are the more valuable on that account.

I cannot do better in connection with what has been said by the two members than read to you some appreciative remarks from His Highness who, as you know, has been watching the progress of the bill and has been taking a keen interest in our discussions. This is what His Highness has commanded me to communicate to you :—" I desire to congratulate the Legislative Council and its President on the satisfactory manner in which this important and contentious measure has been dealt with. The discussions were full and informing and show that the members, both official and non-official, fully appreciate their responsibility and are prepared to bestow ungrudgingly their time and thought on the measures submitted to them. I should be glad if the President would take the opportunity of the next meeting of the Council, after the bill becomes law, to express my appreciation of the services rendered by the non-official members in particular."

This must be very gratifying testimony to you all and sufficient reward for the services you have rendered in passing the bill through the Council.

The non-official members requested the Dewan to convey to His Highness the Maharaja their respectful acknowledgments for the gracious message which His Highness was pleased to communicate to them through the President and they further assured him (President) that they felt highly gratified and honored that their humble services in connection with the Village Office Bill should have attracted the kind notice of His Highness and elicited his warm approval and appreciation.

The meeting then adjourned.

V. P. MADHAVA RAO.
President.

A Bill to amend the Mysore Registration Regulation, I of 1903.

Preamble. Whereas it is expedient to amend the Mysore Registration Regulation, I of 1903, His Highness the Maharaja is pleased to enact as follows:—

Amendment of Section 88 of the Registration Regulation. (1) In para 1 of Section 88, the words "or the Deputy Postmaster-General" shall be inserted after the words "Postmaster-General."

(2) In para 2 of the same section, the word "or" after "Registrar" shall be omitted and the words "or Deputy Postmaster-General" shall be inserted after the words "Postmaster-General."

Received the assent of His Highness the Maharaja on the 26th day of December 1908

M. Madhava Rao
Dewan

Regulation No.VI of 1908

Received the assent of His Highness the Maharaja on the 26th day of December 1908.

A Regulation to amend the Mysore Registration Regulation I of 1903.

Preamble. Whereas it is expedient to amend the Mysore Registration Regulation, I of 1903; His Highness the Maharaja is pleased to enact as follows:-

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(2) In para 2 of the same Section, the word " or " after "Registrar" shall be omitted and the words " or Deputy Post Master General" shall be inserted after the words "Post Master General".

V.P.MADHAVA RAo

Dewan.